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No._____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2000

JEROME ZAMOS,

Petitioner

vs.

PATRICIA KAY ZAMOS,

Respondent

On a Writ of Certiorari to
The Court of Appeal of the State of California
for the Second Appellate District, Division One
and
The Superior Court of the State of California
for the County of San Diego

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This petition raises questions of fundamental fairness , equal protection under state law and due process under section one of the Fourteenth Amendment to the Constitution of the United States of America in a proceeding commenced by a former spouse against PETITIONER years after he had legally disposed of his records of performance in the good belief that his obligations under a decree dissolving the marriage entered nineteen (19) years earlier had been satisfied.

UNRESOLVED ISSUE OF FIRST IMPRESSION

IS THE COURT'S REASONING IN *National Union v. Arnold* 348 U.S. 37, 75 S.Ct. 92, 99 L.Ed. 46 (1954) APPLICABLE TO "*NATURAL PERSONS*" WHOSE ASSETS ARE PROTECTED AGAINST EXECUTION BY JUDGMENT CREDITORS BY VIRTUE OF EXEMPTIONS CREATED UNDER EITHER STATE OR FEDERAL LAW

The specific issues raised by this PETITION under section one of the Fourteenth Amendment to the Constitution of the United States of America are:

I.

Can a state appellate court [without violating the equal protection clause of the Fourteenth Amendment] enforce the terms of an order directing an APPELLANT to pay money to his or her adversary's counsel without affording the APPELLANT all of the rights afforded to all other money judgment debtors under state law?

II.

Can a state appellate court [without violating the equal protection clause of the Fourteenth Amendment] deny an APPELLANT who has fully complied with all of the published provisions of state law which prescribe the manner in which an appeal may be taken, the benefits of appellate review under state law, based solely upon his or her inability to satisfy an order directing him to pay money to his adversary or his adversary's attorney ?

III

Can a state court [without violating the due process clause of the Fourteenth Amendment] deny a litigant the benefit of a defense based upon his or her inability to produce documentary evidence which he or she had a right [under state law] to dispose of because of the passage of time?

CONSTITUTIONAL AND STATUTORY PROVISIONS[1]

The issues discussed in this PETITION arise under the following laws, statutes, and constitutional provisions:

THE CONSTITUTION OF THE UNITED STATES OF AMERICA

Section 1 of the Fourteenth Amendment to the Constitution of the United States of America

CALIFORNIA CODES & STATUTES

California Code of Civil Procedure

§§ 680.010 through 724.260 inclusive

§§ 901 et seq.

California Government Code § 68926

This petition also requires the Court's reexamination of its earlier decision in:

National Union* v. *Arnold
348 U.S. 37, 75 S.Ct. 92, 99 L.Ed. 46 (1954)

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1. **The constitutional and statutory provisions referred to in this PETITION are set out in full in APPENDIX "S" at APP 107 -118 inclusive.**

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IN THE SUPREME COURT OF
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October Term, 2000

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Respondent[2]

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2. All parties to these proceedings are listed in the caption of the case as required under Rule 24 1.(b) of the Rules of the Supreme Court of the United States. When the term "RESPONDENT" is used in the body of the PETITION the term refers to PETITIONER JEROME ZAMOS' former spouse PATRICIA KAY ZAMOS.

PETITION FOR WRIT OF CERTIORARI

COMES NOW PETITIONER JEROME ZAMOS [hereinafter "PETITIONER"] and prays that a Writ of Certiorari be issued pursuant to Rule 10(c) of the Rules of the Supreme Court of the United States to the California Court of Appeal for the Fourth Appellate District, Division 1 [hereinafter "THE CALIFORNIA COURT OF APPEAL"] and the Superior Court of the State of California for the County of San Diego [hereinafter "THE CALIFORNIA FAMILY LAW COURT"] reviewing their orders:

(1) Entered in THE CALIFORNIA COURT OF APPEAL on February 21, 2001 [APPENDIX "A" APP. 1 through 2 inclusive hereinafter "THE DISMISSAL ORDER"] dismissing PETITIONER'S fully perfected appeal from the order/judgment entered in THE CALIFORNIA FAMILY LAW COURT on June 27, 2000 [APPENDIX "B" APP. 3 through 7 inclusive which is hereinafter referred to as "THE JUNE 2000 ENFORCEMENT ORDER"] based solely and exclusively upon PETITIONER'S alleged default under the terms of an order directing the payment of money contained in an order entered in THE CALIFORNIA FAMILY LAW COURT entered on December 14, 2000 [APPENDIX "E" at APP 10 through APP 12 which is hereinafter referred to as "THE APPELLATE FEE ORDER"]; and

(2) THE JUNE 2000 ENFORCEMENT ORDER entered in THE CALIFORNIA FAMILY LAW COURT on June 27, 2000 [APPENDIX "B" APP 3-7 inclusive] which is based upon an alleged default under the provisions of an interlocutory Decree of Dissolution entered on April 26, 1982 in the Superior Court of the State of California for the County of Santa Barbara [APPENDIX "F" at APP 13 through 15 inclusive which is hereinafter referred to as "THE 1982 DISSOLUTION DECREE"].

PETITIONER'S EXHAUSTION OF HIS STATE COURT REMEDIES WHICH SUPPORT THIS COURT'S JURISDICTION UNDER 28 U.S.C. § 1257 (a)

On July 19, 2000 PETITIONER filed a notice of Appeal [APPENDIX "D" at APP 9] pursuant to Code of Civil Procedure §§ 901 and 902 and paid all fees required under the laws and statutes of the State of California Government Code § 68926 and Rules 1 and 2 of the California Rules of Court] to perfect an appeal from THE JUNE 2000 ENFORCEMENT ORDER under the laws enacted by the legislature of the State of California and the state's judicial council.

On October 10, 2000 [in accordance with the provisions of Rule 16(a) of the California Rules of Court] PETITIONER filed his opening brief [APPENDIX "J" APP 21 through APP 38 inclusive and hereinafter referred to as "PETITIONER'S OPENING BRIEF"] in which he raised [among other issues] his claim that he had been denied both due process and equal protection of law in the process initiated by RESPONDENT in THE CALIFORNIA FAMILY LAW COURT on March 23, 2000 [APPENDIX "H" at APP 17] which led up to the entry of THE JUNE 2000 ENFORCEMENT ORDER over eight (8) years after PETITIONER made what he believed was his last payment under the provisions of THE 1982 DISSOLUTION DECREE [see ¶ 29 of APPENDIX "I" at page 20].

On February 21, 2001 [despite the limited provisions of California law (Rule 19 of the California Rules of Court) for the dismissal of a fully perfected appeal] THE CALIFORNIA COURT OF APPEAL issued THE DISMISSAL order which dismissed PETITIONER'S appeal from THE JUNE 2000 ENFORCEMENT ORDER without making any determination of whether the process leading up to its entry violated PETITIONER'S rights under section one of the Fourteenth Amendment to the Constitution of the United States of America based solely upon PETITIONER'S failure to satisfy the monetary terms of THE APPELLATE FEE ORDER.

Thereafter on May 16, 2001 [again without addressing either the due process or equal protection issues raised in PETITIONER'S OPENING BRIEF or the PETITION FOR REVIEW OR IN THE ALTERNATIVE REQUEST FOR ORDER REINSTATING APPEAL AND TRANSFERRING IT TO A DIFFERENT APPELLATE PANEL [APPENDIX "Q" APP 90 through APP 104 inclusive hereinafter referred to as "THE PETITION FOR REVIEW"] of the California Supreme Court denied PETITIONER'S request for relief [APPENDIX "C" at APP. 8].

Based upon the California Supreme Court's denial of review on May 16, 2001 [APPENDIX "C" at APP 8] PETITIONER has no further remedies under California law to obtain relief from the orders entered by either THE CALIFORNIA FAMILY LAW COURT

or THE CALIFORNIA COURT OF APPEAL which have denied him the full protection of California law in violation of the due process and equal protection found in section one clause one of the Fourteenth Amendment to the Constitution of the United States of America [3].

Based upon the foregoing as of this date PETITIONER has exhausted his remedies in the state courts of California and is entitled to invoke this Court's jurisdiction under 28 U.S.C. § 1257(a).

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3. Although the sole purpose of THE APPELLATE FEE ORDER was issue to provide funds for RESPONDENT'S response to the appeal, within two [2] days after denial of Review of THE DISMISSAL ORDER, RESPONDENT commenced a new proceeding in THE CALIFORNIA FAMILY LAW COURT claiming the right to execute against PETITIONER'S exempt assets. RESPONDENT'S current claims in the post dismissal proceedings in THE CALIFORNIA FAMILY LAW COURT are still based upon the non payment of the *full* amount of THE ATTORNEY FEE ORDER [see APPENDIX "R" at APP. 105 through APP 106 Inclusive] despite the fact that she has to date never filed any response to the appeal which PETITIONER has now been denied.

JURISDICTIONAL BASIS FOR PETITION

This petition has been brought to review the decisions of the State Courts of California which PETITIONER alleges have violated his rights under section one of the Fourteenth Amendment to the Constitution of the United States of America which prohibits a state from making or enforcing:

> **. . .[A]ny law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; *nor deny to any person within its jurisdiction the equal protection of the laws.* [emphasis added].**

This Petition is filed on the grounds that in dismissing the appeal from THE JUNE 2000 ENFORCEMENT ORDER [which had been fully perfected in full compliance with all existing provisions of California Law] THE CALIFORNIA COURT OF APPEAL denied PETITIONER the full protection of state law against the effects of an order which had been entered against him through a procedure in which THE CALIFORNIA FAMILY LAW COURT denied him a reasonable opportunity to defend himself in violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States of America.

Because the California Supreme Court has now denied PETITIONER'S PETITION FOR REVIEW or in the alternative ordered THE CALIFORNIA COURT OF APPEAL to reinstate his appeal from THE JUNE 2000 ENFORCEMENT ORDER the two state-court orders which are the subject matter of this PETITION are final under state law and no longer subject to further review or correction in state tribunal.

Based upon the foregoing this Court has jurisdiction under 28 U.S.C. § 1257 (a) to review the two orders of the state courts of California which are the subject matter of this PETITION.

This Court has never addressed the equal protection issues raised by the dismissal of a fully perfected appeal based solely upon a "*natural person's*" failure to respond to a money judgment. Because the enforcement of money judgments against "*natural persons*" in California [as is true in most states] is subject to the state's enforcement of judgment act [see California Code of Civil Procedure § 703.070 (a)] which provides for non-waivable rights [see California Code of Civil Procedure § 703.040] by a "*natural person*" to claim exemptions [see California Code of Civil Procedure § 703.010 (a)], the enforcement of a money judgment through the dismissal of PETITIONER'S fully perfected appeal [without affording him the benefit of those rights] raises unresolved constitutional issues which warrant the exercise of this Court's jurisdiction under Rule 10(c) of the Rules of The Supreme Court of the United States of America].

THE RIGHTS PETITIONER WAS DENIED IN VIOLATION OF SECTION ONE OF THE FOURTEENTH AMENDMENT

Section One of the Fourteenth Amendment to the Constitution of the United States of America provides in part:

> **No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; *nor deny to any person within its jurisdiction the equal protection of the laws* (emphasis added).**

California's legislature provided in California Code of Civil Procedure § 901 provides that the state's Judicial Council had the authority to prescribe rules for the practice and procedure on appeal. That power was not conferred upon the state's courts.

PETITIONER complied with all of the rules prescribed by the Legislature and Judicial Council of the State of California to perfect his appeal from THE JUNE 2000 ENFORCEMENT ORDER but was denied his statutory right under California law to an appeal [which had been fully briefed] by the state's judiciary. There is no provision under California law which confers jurisdiction upon its judiciary to impose additional conditions upon a litigant's appellate rights, or authorizes the states court's to enforce orders directing

the payment of money without compliance with the state's enforcement of judgments act [California Code of Civil Procedure §§ 680.010 through 724.260 inclusive].

California Code of Civil Procedure § 902 provides that any party aggrieved by an order entered in one of the state's trial courts has *the right* to appeal from such an order in the manner prescribed by the legislature and the state's judicial council. PETITIONER fully complied with all of the rules prescribed by the California Legislature and state's Judicial Council for pursuing an appeal from THE JUNE 2000 ENFORCEMENT ORDER. However, despite PETITIONER'S full compliance with the statutes and rules enacted by the California Legislature and the state's Judicial Council he was denied his statutory right to an appeal by CALIFORNIA COURT OF APPEAL based solely on his inability to pay his adversary the sum of SEVEN THOUSAND FIVE HUNDRED DOLLARS ($7,500.00) under the provisions of THE APPELLATE FEE ORDER.

California Government Code § 68926 provides that the fee for filing a notice of appeal in a civil case appealed to a court of appeal is two hundred sixty-five dollars ($265) [see APPENDIX "S" APP. 111]. That section *also* provides that the statutory fee is for *all services, through the rendering of the judgment or the issuing of the remittitur* [emphasis added].

PETITIONER paid the fee prescribed by California Government Code § 68926 but was denied the services covered by that section because he failed to pay an additional SEVEN THOUSAND FIVE HUNDRED DOLLARS ($7,500.00) fee to his adversary pursuant to THE APPELLATE FEE ORDER].

There is no statutory provision in California law which relieves its appellate courts of their mandatory obligations to appellants upon the payment of the fee specified in Government Code § 68926.

California's Enforcement of Judgment Law provides that money judgments entered in the state are enforceable under the provisions of that law [California Code of Civil Procedure § 681.010]. The provision of THE APPELLATE FEE ORDER which required PETITIONER to pay RESPONDENT the sum of SEVEN THOUSAND FIVE HUNDRED DOLLARS ($7,500.00) falls within the definition of "a money judgment" in California's Enforcement of Judgment Law [California Code of Civil Procedure § 680.270].

The procedure adopted by THE CALIFORNIA COURT OF APPEAL in dismissing PETITIONER'S fully perfected appeal and the California Supreme Court in failing to reinstate it [based exclusively upon PETITIONER'S failure to satisfy THE APPELLATE FEE ORDER violated PETITIONER'S rights under section one of the Fourteenth Amendment to the Constitution of the United States to enjoy the full protection of the California Enforcement of Judgment

Act found in California Code of Civil Procedure §§ 695.040, 703.010 (a), 703.020 (b) and § 703.070 (a).

Under Rule 19(a) of the California Rules of Court once an Appellant has caused his opening brief to be filed in accordance with the rules adopted by the California Judicial Council there is no provision under any statute enacted by the state's legislature or rule adopted by the state's JUDICIAL COUNCIL that authorizes any of the state's appellate courts to dismiss an appeal without a decision on the merits which determines the cause [see Article VI § 14 of the Constitution of the State of California].

Despite the limited authority of California's appellate courts to dismiss appeals under the rules adopted by the state's legislature and judicial council, THE DISMISSAL ORDER denied PETITIONER the full privilege of an adversary under California Code of Civil Procedure § 902 to a full appeal in violation of his equal protection rights under section one of the Fourteenth Amendment to the Constitution of the United States of America.

FACTUAL BACKGROUND OF PETITIONER'S STATE COURT APPEAL

In April of 1992 PETITIONER made what he believed was his last support payment to RESPONDENT under THE 1982 DISSOLUTION DECREE [see ¶ 29 of APPENDIX "I" at page APP -20]

Because of the passage of time, however, much of the documentation that would have supported PETITIONER'S defenses was either destroyed in the Northridge Earthquake which occurred in January of 1994 or disposed of four (4) years later in 1998 [see ¶ 27 of APPENDIX "I" at page APP 19]. Thus, when PETITIONER was confronted with the unexpected initiation of proceedings by RESPONDENT in March of 2000 he found himself at a serious disadvantage, particularly when confronted by a less than hospitable reception in the CALIFORNIA FAMILY LAW COURT, which totally rejected even the meager records he was able to produce in response to RESPONDENT'S demands [see THE JUNE 2000 ENFORCEMENT ORDER APPENDIX "B" at APP-6].

FACTUAL BACKGROUND OF ORDER DISMISSING PETITIONER'S APPEAL FROM THE JUNE 2000 ENFORCEMENT ORDER WITHOUT A DECISION ON THE MERITS

The factual basis for the dismissal of PETITIONER'S appeal from THE JUNE 2000 ENFORCEMENT ORDER is summarized in the introduction found in the first paragraph of THE DISMISSAL ORDER entered on February 21, 2001. The facts set forth below are taken from the recitation in THE DISMISSAL ORDER.

On July 19, 2000 PETITIONER filed a notice of appeal [APPENDIX "D" APP 9] seeking review of THE JUNE 2000 ENFORCEMENT ORDER. PETITIONER'S APPEAL BRIEF was filed on October 10, 2000. In his opening brief PETITIONER argued, among other things, that RESPONDENT'S eight year (8) delay in commencing enforcement proceedings effectively denied him full due process because of his lawful disposal of records in 1998 which he was under no legal obligation to preserve [see APPENDIX "J" at pages APP-34 through 38 inclusive.]

On December 14, 2000, THE CALIFORNIA FAMILY COURT [after a hearing reflected in the transcript excerpts filed as APPENDIX "K" APP 39 through APP 59 inclusive] entered THE APPELLATE FEE ORDER which ordered PETITIONER to pay RESPONDENT SEVEN THOUSAND FIVE HUNDRED DOLLARS $7,500 forthwith for her fees and costs to respond to

PETITIONER's appeal.

THE APPELLATE FEE ORDER [APPENDIX "E" at APP-10]]was made despite the fact that the bench officer presiding over the December 7, 2000 hearing [who also ordered the final termination of the ongoing support penalty set forth in THE JUNE 2000 ENFORCEMENT ORDER (see APPENDIX "L" at APP 60 through APP 62 inclusive)] indicated that he believed PETITIONER had "a reasonable chance of success" on the appeal [see APPENDIX "K" at page APP 58 through APP 59][4]

On December20, 2000 RESPONDENT moved to stay PETITIONER'S appeal from THE JUNE 2000 ENFORCEMENT ORDER [APPENDIX "M" at APP 63 through APP 67 inclusive] until PETITIONER paid $7,500 to RESPONDENT under the provisions of THE APPELLATE FEE ORDER. On January 8, 2001 PETITIONER filed his opposition to the request for stay of the appeal [APPENDIX "N" APP 68 through 71 inclusive].

On January 8, 2001 THE CALIFORNIA COURT OF APPEAL issued an order staying PETITIONER'S appeal from THE JUNE 2000 ENFORCEMENT ORDER for thirty (30) days [APPENDIX "O" at APP

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4. A separate appeal is currently pending from THE APPELLATE FEE ORDER, although RESPONDENT is also attempting to have it dismissed without a determination of the issues].

72 hereinafter referred to as "THE JANUARY 2000 STAY ORDER"]. THE CALIFORNIA COURT OF APPEAL *sua sponte* included the following admonition in "THE JANUARY 2000 STAY ORDER":

> On or before February 7, 2001, [PETITIONER] is directed to provide the court with proof of payment of $7,500, to respondent for attorney fees or with a *showing* of why the appeal should not be dismissed [5].

On February 6, 2001 PETITIONER filed his response to THE JANUARY 2000 STAY ORDER and formally requested oral arguments and a written opinion pursuant to Article VI § 14 of the Constitution of the State of California and Rule 21(a) of the California Rules of Court and requested that the stay be vacated and the briefing schedule be reinstated without

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5. California Government Code §68926 provides that the fee for "for filing a notice of appeal in a civil case appealed to a court of appeal is TWO HUNDRED SIXTY-FIVE DOLLARS ($265)". That same section also provides that the "TWO HUNDRED SIXTY-FIVE DOLLARS ($265)" filing fee is to cover "all services, through the rendering of the judgment or the issuing of the remittitur or peremptory writ, except the fee imposed by Section 68927 [the fee for obtaining review by The California Supreme Court]". There is no provision in any California Statute which authorizes any California Court to impose any additional fees as a condition precedent for obtaining a decision on the merits [consistent with the provisions of Article VI § 14 of the Constitution of the State of California] following compliance with the conditions set forth in California Code of Civil Procedure §§ 901 et seq.

reference to the issue involving the payment of the $7,500 to RESPONDENT [APPENDIX "P" at APP 73 through APP 88 inclusive]. In addition to other objections contained in his response to THE JANUARY 2000 STAY ORDER, paragraph (c) through (f) inclusive at APP 75 through APP 76 specifically objected to any procedure which denied him the "non-waivable" rights under California's Enforcement of Judgments Act [California Code of Civil Procedure §§ 680.010 through 724.260 inclusive] in connection with any attempt to enforce the monetary provisions of THE APPELLATE FEE ORDER.

On February 21, 2001 the CALIFORNIA COURT OF APPEAL entered THE DISMISSAL ORDER without complying with the mandatory provisions of California's Enforcement of Judgments Act [California Code of Civil Procedure §§ 680.010 through 724.260 inclusive] and dismissed PETITIONER'S fully perfected appeal from THE JUNE 2000 ENFORCEMENT ORDER. THE DISMISSAL ORDER was entered solely as a result of PETITIONER'S failure to pay RESPONDENT the $7,500.00 in accordance with the provisions of THE APPELLATE FEE ORDER.

The CALIFORNIA COURT OF APPEAL did not include in THE DISMISSAL ORDER an opinion on the merits of PETITIONER'S perfected appeal or any provision which would have allowed the appeal to proceed with either further briefing or oral arguments in the manner provided in Rules 16 (a), 17 (b) and 21(a) of the California Rules of Court.

PETITIONER, claiming that the dismissal of his appeal without a decision on the merits deprived him of his privileges under the constitution and statutes of the State of California and his right to equal protection under section one of the Fourteenth Amendment of the

Constitution of the United States of America, filed a PETITION FOR REVIEW of THE DISMISSAL ORDER with the California Supreme Court [APPENDIX "Q" at APP 90 through APP 104 inclusive] in which he again raised his concerns with the denial of his rights under the mandatory provisions of California's Enforcement of Judgments Act [California Code of Civil Procedure §§ 680.010 through 724.260 inclusive] and section one of the Fourteenth Amendment to the Constitution of the United States of America [see ¶ (d) at APP 239].

On May16, 2001 The California Supreme Court [without any decision having been made on the merits of PETITIONER'S APPEAL as required under the provisions of Article VI § 14 of the Constitution of the State of California] denied PETITIONER'S request [APPENDIX "C" at APP 8] leaving him with no further right to have THE JUNE 2000 ENFORCEMENT ORDER reviewed in the manner referred to under California Code of Civil Procedure §§ 901 et seq.].

Even though PETITIONER was denied his appellate rights under California Code of Civil Procedure § 902 RESPONDENT initiated a new proceeding in THE CALIFORNIA FAMILY COURT on May 18, 2001 [APPENDIX "R" at APP 105 through APP 106 inclusive] in which she still seeks to enforce both monetary provisions of THE JUNE 2000 ENFORCEMENT ORDER and THE APPELLATE FEE ORDER [the non payment of which led to THE DISMISSAL ORDER]. Thus, under RESPONDENT'S post dismissal theory, not only is PETITIONER denied all of the services to which he was entitled upon payment of the fee prescribed under Government Code § 68926, he is also expected to pay RESPONDENT for the services of her counsel that were never rendered.

PRIOR DECISIONS OF THIS COURT DEALING WITH THE DISMISSAL OF APPEALS BY STATE COURTS BASED UPON NON SATISFACTION OF MONEY JUDGMENTS

This Court has previously examined the issues that arises when an appellate court dismisses an appeal following an appellant's failure to either satisfy the judgment appealed from or post a *supersedeas* bond in National Union v. Arnold 348 U.S. 37, 75 S.Ct. 92, 99 L.Ed. 46 (1954) [hereinafter referred to as "THE NATIONAL UNION CASE"]. The present petition, however, raises issues of first impression which were not raised in THE NATIONAL UNION CASE and is therefore subject to review under Rule 10(c) of the Rules of the Supreme Court of the United States.

THE NATIONAL UNION CASE is distinguishable from the issues raised in this petition for the following critical reasons:

(1) THE NATIONAL UNION CASE involves a labor union's failure to comply with the provisions of the order actually appealed from, THE DISMISSAL ORDER giving rise to this petition involves a different order which remains subject to a separate appeal that is still pending and unresolved [see APPENDIX "A" at APP 1];

(2) THE NATIONAL UNION CASE does not involve "*a natural person*" who has rights to exemptions against execution under applicable provisions of state law [cf California Code of Civil Procedure § 703.020] which are non-waivable [California Code of Civil Procedure § 703.040] as in the present PETITION; and

(3) THE NATIONAL UNION case was decided before this Court's seminal decisions in Snidach v. Family Finance Corp., 395 U.S. 337, 89 S.Ct. 1820 (1969) and Goldberg v. Kelly, 397 U.S. 254 90 S.Ct. 1011 (1970)] which recognize significant procedural rights which PETITIONER was denied in the process leading to the dismissal of his appeal by both THE CALIFORNIA FAMILY LAW COURT and THE CALIFORNIA COURT OF APPEAL.

The distinction between judgments against entities and individuals under the equal protection arguments in this petition is particularly significant in view of rights granted to individual judgment creditors under California Code of Civil Procedure § 703.020 (b) and this Court's seminal decisions in Snidach v. Family Finance Corp., 395 U.S. 337, 89 S.Ct. 1820 (1969) and Goldberg v. Kelly, 397 U.S. 254 90 S.Ct. 1011 (1970)].

The decisions in Snidach v. Family Finance Corp., Goldberg v. Kelly, and the line of cases which have followed recognize individual rights under section one of the Fourteenth Amendment which do not extended to institutional defendants.

Based upon the foregoing THE CALIFORNIA COURT OF APPEAL'S dismissal of a fully perfected appeal by PETITIONER based solely upon his failure to satisfy a money judgment [whether entered in a family law court or anywhere else] raises a substantial issue under section one of the Fourteenth Amendment to the Constitution of the United States of America.

PETITIONER'S LEGAL ARGUMENT

INTRODUCTION

The principal issue raised by this petition does not involve the question of whether the State of California, or any other state has an obligation under section one of the Fourteenth Amendment to the Constitution of the United States of America to grant a "*natural person*" who appear in its family law courts the right to appeal or to have money judgments enforced in a certain way. The principal issue raised by this petition is whether after a state's legislature has conferred rights upon "*natural person's*" [and declared that their denial is a violation of "public policy"] can they be taken away or ignored by the state's judiciary without violating a "*natural person's*" equal protection rights under section one of the Fourteenth Amendment to the Constitution of the United States which prohibits a state from depriving any person's right to:

> **. . . life, liberty, or property, without due process of law; *nor deny to any person within its jurisdiction the equal protection of the laws.* [emphasis added]**

Although there are reported cases in which a defaulting spouse has been denied appellate rights in family law cases, there appear to be no reported cases in which the defaulting spouse who has raised a defense based upon his or her right to protection against the enforcement of a "money judgment" under a "non-waivable" provision of state law. There also appear to be no cases involving a defaulting spouse who claims his inability to perform is based upon a lack of non exempt assets [cf Goodridge v. Goodridge, 591 S.W.2d 571, 572 (Tex.Civ.App. 1979)].

I.

A STATE APPELLATE COURT CANNOT ENFORCE THE TERMS OF AN ORDER DIRECTING AN APPELLANT WHO IS "*A NATURAL PERSON*" TO PAY MONEY TO HIS OR HER ADVERSARY WITHOUT COMPLYING WITH THE PROVISIONS OF STATE LAW APPLICABLE TO THE ENFORCEMENT OF ALL MONEY JUDGMENTS AGAINST ALL "NATURAL PERSONS"

Under California law [applicable to all money judgments enforceable against "*natural persons*"] an order or judgment directing the payment of money is subject to the limitations contained in the state's Enforcement of Judgments Act [California Code of Civil Procedure §§ 680.010 through 724.260 inclusive] which protects certain assets of individual judgment debtors against liquidation [California Code of Civil Procedure § 703.020 (a)][6].

To emphasize the importance of the exemptions created for the benefit of "*natural persons*" the California

---

6. The Constitutional issue [which the bench officer in the December 7, 2000 hearing leading up to the entry of THE DECEMBER FEE ORDER indicated a lack of interest in] was first raised during the course of the December 7, 2000 hearing [see APPENDIX "K" page APP-52 through page 56 inclusive. PETITIONER also raised his equal protection rights under the Fourteenth Amendment to the Constitution of the United States of America in ¶¶ 30 and 31 of his response to THE STAY ORDER [APPENDIX "P" at page APP 83 through 84 inclusive, APP 231 through APP 232 INCLUSIVE] and issue (b) through (d) of his PETITION FOR REVIEW [APPENDIX "Q" at pages APP-91 through APP-92]

Legislature enacted California Code of Civil Procedure § 695.040 which provides:

> ***Property that is not subject to enforcement of a money judgment may not*** **be levied upon or** ***in any other manner applied to the satisfaction of a money judgment.*** **[emphasis added]**

The restrictions imposed upon the enforcement of money judgments against the assets of individual judgment debtors under California law includes money judgments entered in the state's family law courts. [see California Code of Civil Procedure § 703.070 (a).

Because California's legislature has determined that a *"natural person"* has certain non-waivable rights under California's Enforcement of Judgments Law [California Code of Civil Procedure §§ 680.010 through 724.260 inclusive] based upon what it refers to as important issue of "public policy" as set forth in California Code of Civil Procedure § 703.0740 which provides as follows:

> ***A purported or contractual or other prior waiver of the exemption provided by this chapter or by any other statute,*** **other than a waiver by failure to claim an exemption required to be claimed or made at the time enforcement is sought,** ***is against public policy and void.*** **[emphasis added]**

As a result of the statutory scheme set forth above the denial of the statutory rights referred to herein to PETITIONER by THE CALIFORNIA COURT OF APPEAL through the entry of THE DISMISSAL ORDER based solely upon a default in the payment of an order directing the payment of money results in a clear violation of his rights under the Equal Protection clause found in section one of the Fourteenth Amendment to the Constitution of the United States of

America. It is the existence of those important non-waivable statutory rights which creates an issue of first impression for this Court and distinguishes the facts in this PETITION from the facts examined by this Court in THE NATIONAL UNION CASE.

A review of the record of the proceedings leading up to this PETITION establish that PETITIONER raised his federally protected due process and equal protection concerns at each stage of the proceeding leading up to the dismissal of his perfected appeal and the denial of review by the California Supreme Court [see APPENDIX "J" at APP. 26 through 29 inclusive AND APP 34 through APP 28 inclusive, APPENDIX "K" at APP 54 through APP 56 inclusive, APPENDIX "N" at APP 71, APPENDIX "P" at APP 74 through 75 inclusive, ¶¶ 10 through 31 inclusive of APPENDIX "P" at APP 78 through APP 84 inclusive and ¶¶ (c) and (d) of APPENDIX "Q" at APP 92 through APP 93 inclusive].

II.

A STATE APPELLATE COURT CANNOT DENY AN APPELLANT WHO HAS FULLY COMPLIED WITH ALL OF THE PUBLISHED PROVISIONS OF STATE LAW WHICH PRESCRIBE THE MANNER IN WHICH AN APPEAL MAY BE TAKEN,THE BENEFITS OF APPELLATE REVIEW BASED SOLELY UPON HIS OR HER FAILURE TO SATISFY AN ORDER DIRECTING HIM TO PAY MONEY TO HIS ADVERSARY OR HIS ADVERSARY'S ATTORNEY

Because the legislature of the State of California has declared [through the enactment of Code of Civil Procedure § 902] that anyone aggrieved by a judgment or order described in Code of Civil Procedure § 904.1 (a) has a right to an appeal, and under Government Code § 68926 provided that upon the payment of a two-hundred and fifty dollar ($250.00) fee receive "all services, through the rendering of the judgment or the issuing of the remittitur"neither a California Trial or Appellate Court has the right to deny either PETITIONER or anyone else the full benefits of such an appeal, simply as a means of bypassing the protections afforded to non-appealing judgment debtors under the "non-waivable" provisions of California's Enforcement of Judgments Act [Code Civil Procedure § 703.040].

Unlike the facts leading up to the dismissal of the appeal in THE NATIONAL UNION CASE supra, the issue on this PETITION is not a matter of whether PETITIONER should have satisfied the underlying order appealed from as a precondition to pursuing his appeal [which he was not required to do under California law (see 9 Witkin CALIFORNIA CIVIL PROCEDURE 312 Appeal § 265 (4th Edition 1997))], but whether upon satisfying all of the statutory

requirements [including the provision in California Government Code § 68926 which provided that the statutory filing fee covered " all services, through the rendering of the judgment or the issuing of the remittitur"] the state's judiciary could refuse to provide "all services" because of his failure to satisfy a separate order issued by the trial court.

Once again, while the Court may have observed in THE NATIONAL UNION CASE that courts have certain inherent authority to protect their process, where a state's legislature has adopted well defined procedures for benefit of all litigants, the state's judiciary cannot deny those benefits to a litigant who has strictly complied with their terms, without violating the equal protection provision of section one of the Fourteenth Amendment to the Constitution of the United States of America.

III.

A STATE COURT CANNOT DENY A LITIGANT THE BENEFIT OF A DEFENSE BASED UPON A AN INABILITY TO PRODUCE DOCUMENTARY EVIDENCE WHICH THE LITIGANT HAD A RIGHT TO DISPOSE OF PRIOR TO THE COMMENCEMENT OF THE PROCEEDING BECAUSE OF THE PASSAGE OF TIME

The underlying appeal, which the CALIFORNIA COURT OF APPEAL dismissed on February 21, 2001 without deciding, arises out of an application for relief filed by RESPONDENT PATRICIA KAY ZAMOS on March 23, 2000 [APPENDIX "H" APP. 17] almost eight (8) years after PETITIONER had made what he believed was his last payment under the provisions of THE 1982 DISSOLUTION DECREE [see ¶¶ 28 through 29 at page APP 20 of APPENDIX "I'].

As set forth at APP 4 of THE JUNE 2000 ENFORCEMENT ORDER APPENDIX "B" PETITIONER'S defense to RESPONDENT'S March 23, 2000 application was:

> **. . . [H]e has met those obligations, but his records were destroyed in the Northridge earthquake[7].**

PETITIONER'S defense was based upon the following sworn statement which is set forth in ¶ 27 at APP 19 of APPENDIX "I":

---

7. This Court should be able to take judicial notice under Rule 201(b) of the Federal Rules of Evidence of the magnitude and destructive force of the 1994 Northridge earthquake within the area in which PETITIONER'S office (zip code 91367) and home (zip code 91364) are located.

> **[M]uch of the documentation which evidences [PETITIONER and his current wife's] financial contribution to the support of both RESPONDENT and [their daughters] has been lost, destroyed in the 1994 [Northridge] earthquake or simply disposed of in 1998 . . .**

Despite the undisputed fact that both PETITIONER'S home and office were in fact located within the area affected by 1994 Northridge earthquake, PETITIONER'S defense was rejected by THE CALIFORNIA FAMILY LAW COURT located two hundred [200] miles to the south in San Diego because the Court observed at APPENDIX "B" APP 6:

> **It is not believable that PETITIONER, an attorney, took no court action, got no receipts, prepared no duplicate documents, cannot find check records, nothing. All PETITIONER asks is trust him . . .**

THE CALIFORNIA FAMILY LAW COURT'S observations were made without any explanation of what legal requirements obligated PETITIONER to maintain such records for eight (8) years and what legal proceedings PETITIONER [who believed he had satisfied his obligations to RESPONDENT] was expected to bring [cf Snidach v. Family Finance Corp., 395 U.S. 337, 89 S.Ct. 1820 (1969) and Goldberg v. Kelly, 397 U.S. 254 90 S.Ct. 1011 (1970)]. What PETITIONER was asking THE CALIFORNIA FAMILY LAW COURT for in response to RESPONDENT'S delayed filing was, however, not trust but due process and a fair opportunity to defend himself. Instead, despite the lack of any legal requirement which required PETITIONER to maintain records relating to his failed marriage indefinitely or to commence any legal proceedings to prove his

performance he was punished through the arbitrary imposition of a liability of over one hundred and forty thousand dollars [$140,000.00+]

Although there appear to be few , if any cases dealing with the precise issue present [making it again a case of first impression suitable for review under Rule 10(c) of the Rules for the Supreme Court of the United States of America] in the context of this petition, the concept is fairly straightforward and illustrated by the observation by the District Court in Ashcraft v. Shenango Furnace Co. 56 F.Supp.2d 895 (N.D.Ohio 1999) in footnote 8 at 56 F.Supp.2d. 902:

> **The Court does not see, and plaintiff does not address, how defendants may be held liable for failing to produce information they were not required to keep.**

In a similar, but more direct discussion of the record destruction issue an Illinois Court in Estate of Adolph Fantozzi v. Lake View Trust and Savings Bank 183 Ill.App.3d 732, 736-737, 539 N.E.2d 340, 343-344 (Ill.App. 1988) held that where a claim was made against a bank on an obligation it had to a depositor after the bank was legally entitled to destroy its records the institution could rely upon a presumption that the obligation had been discharged prior to the legal destruction of the records of its performance.

There is in fact no legal basis for requiring PETITIONER or anyone else to maintain records relating to a failed marriage for a period of eight (8) years after he or she comes to the conclusion an obligation has been satisfied and discharged, particularly when the person to whom the alleged obligation is owed [knowing where the other party may be found] remains moot. At a minimum, while no court

seems to have ever addressed the question before, in the absence of some evidence that a former spouse has somehow secreted his or herself, an eight (8) year delay in processing a monetary claim is [as a matter of law] a violation of the due process requirements of section one of the Fourteenth Amendment to the Constitution of the United States of America.

CONCLUSION

Because California law provides "*natural persons*" both the right to appeal from the adverse decisions entered in the state's family law courts and the right to assert the benefits of the "non-waivable" provisions of the state's Enforcement of Judgments Act, The CALIFORNIA COURT OF APPEAL'S dismissal of PETITIONER'S perfected appeal from a judgment [based upon proceedings commenced years after PETITIONER was legally entitled to destroy the records needed to defend himself] based solely upon his inability to respond to a money judgment violated section one of the Fourteenth Amendment were violated.

Because the issues relating to a "*natural person's*" right to assert his right to protection under a state's exemption laws before his or her appeal is dismissed in response to a default under "a money judgment" is an of one of first impression under section one of the Fourteenth Amendment to the Constitution of the United States of America they warrant the issuance of certiorari pursuant to Rule 10(c) of the Rules of the Supreme Court of the United States of America.

LAW OFFICES OF:
JEROME ZAMOS

Jerome Zamos
Petitioner *Pro Se*

(2)

JUL 02 2001

Supreme Court U.S.

01-12 JUL 02 2001

No._____

OFFICE OF THE CLERK

IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 2000

JEROME ZAMOS,

Petitioner

vs.

PATRICIA KAY ZAMOS,

Respondent

On a Writ of Certiorari to
The Court of Appeal of the State of California
for the Second Appellate District, Division One
and
The Superior Court of the State of California
for the County of San Diego

PETITIONER'S APPENDIX FILED IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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APPENDIX "A"

COURT OF APPEAL, FOURTH APPELLATE DISTRICT
DIVISION ONE
STATE OF CALIFORNIA

filed
FEB 21 2001

In re the Marriage of JEROME and PATRICIA K. ZAMOS.

D036239

JEROME ZAMOS,
Appellant,

(Super.Ct.No. 0270609)

V.

PATRICIA K. ZAMOS,
Respondent.

THE COURT:

On July 19, 2000, Jerome Zamos filed a notice of appeal seeking review of the June 27, 2000, judgment determining support arrearages. He filed his opening brief on October 10, 2000. On December 14, 2000, the *superior* court ordered Jerome Zamos to pay $7,500 forthwith to Patricia Zamos for her fees and costs to respond to Jerome Zamos's appeal under Family Code sections 3557 and 2030. Jerome Zamos filed a notice of appeal seeking review of that order. (D037299.)

On December20, 2000, Patricia Zamos moved to stay the appeal in D036239 until Jerome Zamos paid the $7,500. On January 8,2001, Jerome Zamos filed an opposition to the request for stay of the appeal. On January 8, 2001, this court issued an order staying the appeal for 30 days. The order further provided: "On or before February 7, 2001, appellant is

directed to provide the court with proof of payment of $7,500, to respondent for attorney fees or with a showing of *why* the appeal should not be dismissed." On February 6, 2001, Jerome Zamos filed a "Response to the order to show cause; request for oral arguments and written opinion pursuant to Article VI § 14 of the Constitution of the State of California and Rule 21(a) of the California Rules of Court and request to vacate stay and reinstate the briefing schedule on pending appeal pursuant to Code of Civil] Procedure § 473." Jerome Zamos concedes he has not made the S7.500 payment.

The January 8, 2001, order of this court was not an order to show cause. Rather, the order provided Jerome Zamos with time and opportunity to demonstrate his compliance with the superior court's order, or to oppose dismissal of his appeal on this court's motion. Motions in a *reviewing* court "may be disposed of after opposition thereto has been filed or the time for filing such opposition has expired. Upon request of a party or upon its own motion, the reviewing court may place any motion on the calendar for hearing or the court may otherwise dispose of the motion as it may determine.' (Cal. Rules of Court, rule 41(b).) This court denies Jerome Zamos's request to place the motion on calendar.

The appeal (D036239) is dismissed.

KREMER, P. J.

Copies to: All parties

APPENDIX "B"

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO

Filed
Jun 27, 2000

In re the Marriage of:) Case No.: D 270609
Petitioner: JEROME ZAMOS) JUDGMENT
and)~~ORDER~~ AFTER HEARING
Respondent: PATRICIA ZAMOS)

The parties were granted an Interlocutory Judgment of Dissolution on April 8, 1982. Petitioner/Father, an attorney, was *in propria persona.* Respondent/Mother was represented by counsel. They entered in to a Marital Settlement Agreement .and Stipulated Judgment. In the Judgment, prepared by Petitioner, it was ordered that Petitioner pay reasonable college education expenses for each of the three children of the parties.

The parties also entered into a unique spousal support provision. Petitioner was to $750. per month for a period of ten (10) years from May 1, 1982 through April 30, 1992 provided *that all payments required to be made Petitioner to Respondent pursuant to their Marital Settlement Agreement and the Judgment were in fact made prior to the end of the calendar year in which they were due.* (emphasis added) If the payments were not made as scheduled, i.e., by the end of the calendar year were fulfilled by April 30, 1992, then spousal support would reduce to 1.00 per year.

However, if Petitioner had not fulfilled all of his obligations prior to April 30, 1992, the spousal support would not be reduced to $1.00 per year, but would continue

at '*The amount currently payable*' (emphasis added) (The *amount* payable for spousal support was reduced from $750 to $500 on June 2, 1989 by the Honorable Fred Castro.) This agreement was enforceable against Petitioner's estate in the event of his demise. (The non-termination in the event of death and the 10-year periodic payments were tax devices in the pre-1984 tax era.)

Petitioner was also required to provide life insurance as long as his support obligation existed.

In this agreement, Petitioner agreed to buy Respondent out of his law practice and other assets for $40,000.00 not only by the judgment, but by a note bearing 12% interest. One-half of the $40,000 was to be paid by May 1,1983 (a year later) and the remaining $20,000 plus interest was to be paid by May 1 1984 (two years later).

The issue before the Court is whether Petitioner has met all of his obligations under the judgment. Respondent says Petitioner has not met those obligations. Petitioner says he has met those obligations, but his records were destroyed in the Northridge earthquake.

<u>Spousal Support</u>:

Neither side disagrees that Petitioner quit making payments on May 1,1992. Petitioner says he quit because they terminated on that date pursuant to the judgment. Respondent says Petitioner has not fulfilled his obligations, there-fore, the payments were to continue pursuant to the judgment. The amount that would be due on March 31, 200 is $66,501.96

College Expenses:

Petitioner was to pay $250 per month toward'Susan's college expenses. The money was to be sent directly to the child. The daughter, Susan, testifies in her declaration that Petitioner went from reluctant, to sporadic, to non-existent in his payments and that payments for the last year were not made. Daughter, Margaret, corroborates this testimony.

The amount that would be due, including interest, Is $3,919 as of May31, 2000.

In response, Petitioner submits a check stub for January 14, 1992 in the sum of $1,200 and a stub for February 13, 1992 in the sum of $250. He also submits a business check (?) payable to Susan on August 28, 1991 in the amount of $1,200. In her senior year, he says he gave her and said to charge the $3,500 tuition which he said she did. He has no record of this. Susan categorically rebuts all but the possibility of a $250 payment. Susan submits Northwestern records that support her declaration. The Northwestern records show no deposit of $3,500.

Petitioners Equalization Obligation:

Petitioner was to pay $40,000 ass previously set forth. He clearly did not make the $20,000 payments as scheduled. He admits in a 1988 declaration that he did not comply with that order. He did make some payments at the rate of $350 per month. Respondent declares that Petitioner made no payments after April 1992.

Mr. Zamos' own declaration in 1989 showed that

he still owed over $29,000 and his own projections indicated that he would not comply with the April 30, 1992 payoff date.

Mr. Zamos' basic defense to all of the above is that a sewer line broke in 1994 and destroyed his records and the bank cannot produce duplicates.

He further states that he and his present wife obtained a line of credit in 1990 against her residence and paid off their outstanding obligations. They believe one of those obligations was the outstanding amount due to Respondent. This supposedly was done in 1990.

Respondent flatly denies receiving a lump sum payoff and she submits her bank records for the period. She says ha continued through Aril 1992 to pay the $350 toward the note.

The Court has reviewed the entire file and finds no tangible evidence of any kind that indicates Petitioner met his obligations under the agreement on or before April 31, 1992.

It is not believable that Petitioner, an attorney, took no court action, got no receipts, prepared no duplicate documents, cannot find check records, nothing. All Petitioner asks is trust him. This is difficult to do in the face of detailed and specific declarations to the contra by two of his daughters. His version is also belied by the fact that he continued to pay money towards his obligation well after the claims he paid it off. He only stopped in April, 1992.

The entire history of this case supports the Court's

finding that Petitioner was an unhappy and recalcitrant payer throughout the case.

Therefore, the Court makes the following order and findings:

1. Spousal support did not terminate on April 31,1992 and pursuant to the terms judgment continued thereafter and remains in effect currently as does the obligation to maintain life insurance.

2. The arrearage on support as of March 31,2000 is $66,500. Since this is ongoing there is no basis for laches and none is found.

3. The amount due for college expenses is $3,919 as of May31, 2000. The Court rejects the payments claimed by Petitioner of $3,500 and $1,200.

4. The balance due on the equalization payment under the Interlocutory Decree is $60,829. There is no credible proof of any payoff. There is no laches. Petitioner received his property under the agreement. Respondent did not.

5. Attorney fees are ordered to be paid by Mr. Zamos in the amount of $12,184 through preparation of the order. These fees are to be paid directly to James R. Spievak, Esq., at 6006 Street San Diego. The fees are for the purpose of enabling Respondent to pursue the enforcement of spousal support, supplemental child support and the judgment of an equalization payment for the division of community property:

DATED: June 26, 200

EDWARD B. HUNTINGTON
Judge of the Superior Court

APPENDIX "C"

Court of Appeal, Fourth Appellate District
Division One No. D036239
S096292

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re the Marriage of JEROME AND PATRICIA K. ZAMOS.

JEROME ZAMOS. Appellant,

v.

PATRICIA K. ZAMOS, Respondent.

FILED

MAY 16, 2001

PETITION FOR REVIEW OR IN THE ALTERNATIVE REQUEST FOR AN ORDER REINSTATING THE APPEAL AND TRANSFERRING IT TO A DIFFERENT APPELLATE PANEL

DENIED.

George
Chief Justice

APPENDIX "D"

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO

Filed
JUL 19, 2000

In re the Marriage of:	**) Case No.: D 270609**
Petitioner: JEROME ZAMOS	**) Notice of Appeal**
and	**)Combined with**
Respondent: PATRICIA ZAMOS	**)Notice of Election etc.**

To the Clerk of the above-entitled COURT:

PLEASE TAKE NOTICE that Petitioner, JEROME ZAMOS, appeals to the Coat of Appeal for the Fourth District, Division One, from the judgment entered on or about June 27, 2000.

NOTICE IS FURTHER GIVEN that Petitioner, JEROME ZAMOS, hereby elects to proceed under the provisions Rule 5.1 of the California Rules of Court, rather than Rule 5 of said Rules.

APPENDIX "E"

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO

Filed
Dec 14, 2000

In re the Marriage of:	**Case No.: D 270609**
Petitioner: JEROME ZAMOS	)
and	)
Respondent: PATRICIA ZAMOS	)

FINDINGS AND ORDER AFTER HEARING

x As Attached

Dated: DEC 14, 2000

THOMAS ASHWORTH III

ATTACHMENT TO FINDINGS AND ORDER AFTER HEARING

This matter previously came on for hearing on October 31, 2000 in Department F-2 before the Honorable Edward R. Huntington, Judge Presiding on Respondent's Motion For Attorney Fees And *Costs* (Companion Matter) filed on October 13, 2000. At said hearing, Petitioner waived any defects of proper notice of the motion required by Code of Civil Procedure §1005. The matter was thereafter continued to December 7, 2000 at 1:45 p.m as more particularly set out in the Findings And Order After Hearing filed November 3, 2000. Petitioner, having filed a Statement of Doubt of Judicial

Officer's Impartiality And Objection to further Proceedings Before The Honorable Edward B. Huntington Based Upon His Apparent Lack Of Impartiality under Code of Civil Procedure §§ 170.l and 170.2, the Honorable Edward B. Huntington having recused himself and the matter having been transferred thereafter to Department F3, the Honorable Thomas Ashworth, Judge Presiding. as mote particularly set out in the Minute Order dated November 15, 2000.

This matter now having come on regularly for beating on December 7, 2000, the court having received into evidence Petitioner's and Respondent's pleadings and relying only upon admissible evidence, and declined to make specific evidentiary rulings, having read and considered the pleadings and records of this proceeding as well as Petitioner's Writs of Mandate and/or other appellate motions including Appendices,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The court accepts Petitioner's stipulation made in open court and, orders that for purposes off all further proceedings and motions is this dissolution, of marriage proceeding, persona) service on Petitioner Jerome Zamos shall be deemed accomplished upon the service of pleadings, tapers and orders upon him by causing a true copy thereof to be telecopied to the party at the facsimile number of 818-348-6095 The facsimile machine used shall comply with Rules of Court, Rule 2003 (3) and no error shall be reported by the machine, Pursuant to Rules of Court, Rule 2008(e)(4), the transmitting facsimile machine shall properly issue a transmission report, a copy of which shall be attached to each declaration of service.

2. Petitioner Jerome Zamos shall forthwith pay to Respondent the sum of $7,500 as and for a contribution to reasonable fees and costs necessary to respond to Petitioner's

appeal from judgment after hearing filed June 27,2000 and/or such other writs or other motions pending or filed in the California Appellate Courts. Said order is without prejudice for a future application for additional fees when Respondent knows what her actual fees have been

incurred for the appellate proceedings.

3. This order is based upon the finding that Respondent's appellate expenses will exceed the amount awarded and could be double the award, Respondent cannot respond to the appeal without retaining counsel with reasonable expertise in appellate matters, that Mr. Temko's request is reasonable and he has appropriate expertise, that Petitioner is an attorney pursuing the matter in pro per, that there presently exists an unlevel playing field, that Petitioner's income is at least as great as Respondent's, although it does vary, and his expenses are covered in part by contributions from his wife, that Respondent has a need for attorney fees and therefore, the award of attorney's fees for Respondent is appropriate under both Family Code § 3357 and Family Code § 2030.

APPROVED AS CONFORMING TO THE COURT'S ORDER
THE LAW OFFICES OF JEROME ZAMOS

/S/JEROME ZAMOS
JEROME ZAMOS PETITIONER
IN PRO PER

"APPENDIX "F"

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SANTA BARBARA

Filed
APR 26, 1982

In re the Marriage of:	)Case No.: 132202
Petitioner: JEROME ZAMOS	)
and	)
Respondent: PATRICIA ZAMOS	)

INTERLOCUTORY JUDGMENT OF DISSOLUTION OF MARRIAGE[1]

4. THE COURT FURTHER ORDERS:

x See Attached.

[irrelevant provisions omitted]

2. Petitioner shall pay to Respondent for the support and maintenance of their minor children the sum of $250 per child per month for a total sum of $750 per month payable in advance on the first of each and every month commencing May 1, 1982, and terminating when each child reaches the age of 18 years, marries or is sooner emancipated, or dies, at which time child support payable for the remaining children or child shall be increased to maintain a total child support at $750 per month until the last child to do so reaches the age of

---

1. Only the relevant sections of the judgment are included in this appendix.

15 years, marries or is sooner emancipated, or dies.

[irrelevant provisions omitted]

In addition Petitioner shall pay the reasonable college education expenses for each of the parties' children.

3. Petitioner shall pay to Respondent as and for spousal support the amount of $750 per month fur a period of ten (10) years payable on the first of each and every month commencing May 1, 1982, and continuing through April 30, 1992, at which time spousal support shall terminate, provided that all payments required to be made by Petitioner to Respondent pursuant to their Marital Settlement Agreement and under this Interlocutory Judgment, wherever set forth, were ,made prior to the end of the calendar year in which they were due. In the event that any such payments were not made as hereinabove and hereinafter set forth, but were all made by April 30, 1992, then spousal support shall, on May 1, 1992, be reduced to and shall be payable at One Dollar ($1.00) per year. In the event that any such payments required to be made by Petitioner to Respondent pursuant to the Marital Settlement Agreement and this Interlocutory Judgment, are outstanding and unpaid on April 30. 1992, then spousal support shall not be reduced to One Dollar ($1.00) per year but shall continue to be payable in the amount currently payable in April 1992 until further order of Court. Spousal support shall terminate immediately in the event of the remarriage or death of Respondent but shall not terminate upon the death of Petitioner, his estate to be responsible for the payment of spousal support through the period for which Petitioner has an obligation to pay such support

As and for further spousal support Petitioner will maintain in full force and effect any group insurance insuring the life of Petitioner for the benefit of Respondent as sole beneficiary thereof for so long as he has an obligation to pay spousal support.

4. Petitioner shall pay to Respondent the sum of

$40,000 as her share of the community interest: in Petitioner's law practice and other assets which shall be evidenced by a Note to be executed forthwith, said sum to bear interest at the rate of 12% per annum until paid. One-half the principal sum ($20,000) shall be due and payable together with interest to date on May 1, 1983, and the remaining one—half the principal sum ($20,000) shall be due and payable together with interest to date on May 1, 1984. Each of said sums must be paid when due and in their entirety.

[remainder of 1982 decree omitted]

"APPENDIX "G"

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO

In re the Marriage of:	**) Case No.:**
Petitioner: JEROME ZAMOS	**)D 270609**
and	**)**
Respondent: PATRICIA ZAMOS	**)**

Minute Order of August 25, 1989[2]

√ support Child : $250 per month for college education

Spousal: $500 per month

This Court rules that pursuant to judgment file in 1982 this court has authority to rule on education issue.

√ attorney fees: parties bear their own

Petitioner to pay resp. $300/mo on the note. The Court finds car has value of $14,000 which amount shall be added to outstanding note without interest at $300/mo. Petitioner to prepare statement of decision. This court will review issues in four years.

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2. Notwithstanding the passage of almost twelve (12) years, and the requirement under California Law that no order takes effect until the entry of a formal order, no "appealable order" has ever been entered on the August 25, 1989 minute order to this day.

"APPENDIX "H"

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO

FILED
MAR 23, 2000

In re the Marriage of:	) Case No.:
Petitioner: JEROME ZAMOS	) D 270609 EBH
and	)
Respondent: PATRICIA ZAMOS	)

ORDER TO SHOW CAUSE

Date: 5/3/00 Time: 9 AM √ Dept. F-2

√ Other: see attachment

√ attorney fees:

Attachment to Order to Show Cause OTHER (specify)

1. ENTER ORDER FROM FEARING OF 8/25/1969
2. JUDGMENT ON ARREARS OF COLLEGE EDUCATION CHILD SUPPORT
3. JUDGMENT ON ARREARS OF SPOUSAL SUPPORT
4. ARREARS UNDER OBLIGATION OF INTERLOCUTORY JUDGMENT OF DISSOLUTION OF MARRIAGE AS MODIFIED BY ORDER OF 6 /2 5/89
5. IN THE ALTERNATIVE, RENEW JUDGMENT ON PAYMENT OF NOTE SUMS

"APPENDIX "I"

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

FILED
APR 21, 2000

In re the Marriage of:	)	Case No.:
Petitioner: JEROME ZAMOS	)	D 270609 EB
and	)	
Respondent: PATRICIA ZAMOS	)	

RESPONSIVE DECLARATION TO ORDER SHOW CAUSE

Date: May, 3, 2000 Time: 9 AM Dept. F-2

Spousal Support:

√ I do not consent

√(1) The court determine that all of PETITIONER'S obligations under the previous orders of this court concerning child and spousal support have been satisfied and that PETITIONER has no further obligations under any order entered in this case to either RESPONDENT or the children of his marriage to RESPONDENT; and

(2) Any claims based upon PETITIONER'S alleged breach of any promissory note held by RESPONDENT are barred under the provisions of Code of Civil Procedure § 337.

√	attorney fees and costs:	I do not consent
√	Other relief requested:	I do not consent to the order requested
√	Supporting Information:	contained on the attached declaration.

[Significant Excerpts from Attached Declarations]

25. When the financial burden became too great, and the credit cards we had been using to fund support payments to RESPONDENT and my children's tuition at exclusive private schools had maxed out, I filed a request for modification in 1988.

26. The suggestion that I failed, at any time, to honor my legal and moral commitment to assist with my daughter SUSAN'S education at Northwestern ignores the ongoing financial contributions my current wife and I made throughout her years at Northwestern as well as the role I played in obtaining the $50,000.00 settlement of her personal injury claim (which I handled without a fee and was forced to settle on the day trial was scheduled to commence in Santa Barbara because Susan and her mother refused to appear).

27. Although much of my documentation which evidences our financial contributions to the support of both RESPONDENT and my daughters (including SUSAN) has been lost, destroyed in the 1994 earthquake or simply disposed of in 1998 when I moved my office to its current location, I have by reviewing old computer disks and limited records been able to reconstruct what I believe actually occurred. The limited material which I have been able to locate includes the following materials which contradict both RESPONDENT and my daughter SUSAN'S claims in these proceedings:

(a) A copy of the September 29, 1991 letter (Exhibit "1") which I have downloaded from an old computer disk (which I am prepared to have examined by any computer expert RESPONDENT may choose) which evidences that I had provided SUSAN an American Express card on my account and was making regular payments to her either by check or by direct deposit into her ATM account at HOME FEDERAL SAVINGS (she had left me with her ATM card to facilitate this process).

(b) A copy of an entry made in my office check register on August 28, 1991 showing the issuance of check no. 1128 to Susan at or about the time she left for France.

28. The primary basis for RESPONDENT'S claims is that I defaulted in making "non support" payments in connection with a note related to the alleged value of my Santa Barbara law practice (the default having taken place in 1982 when I was unable to make payments on a 1979 Mercedes station wagon at which time the vehicle was repossessed). RESPONDENT was, however, left with the 1978 Pontiac Sunbird that by this point in time was free and clear (she ultimately traded that vehicle in on a new car).

29. While I had initially offered to provide RESPONDENT with a new note following the modification hearing in mid 1989, that proposal was initially rejected by RESPONDENT through her former counsel and I was ultimately required to pay off the entire balance in December of 1990 in lieu of the promissory note which is attached to RESPONDENT'S moving papers.

29. RESPONDENT'S own declaration establishes that I continued to make all payments to her through April of 1992 [consistent with the terms of both the original agreement and decree and modification order which she and her attorney refused to agree to). I have not made any further payments to RESPONDENT since April of 1992 because when I made my last payment I believed that no further payments were required.

30. During my daughter SUSAN'S junior year at Northwestern she suggested that she would prefer that I make a lump sum payment of $3,500.00 towards her tuition in her Senior year, rather than the installments of $250.00 per month which I had made through the end of her junior year. Her stated reason for this request was the fact that the fund that had been established to pay for her college education had been depleted as a result of "loans" she had made to RESPONDENT and her older sisters which were not being repaid.

31. As a result of SUSAN'S request I gave her a valid credit card number which she was allowed to use to make a $3,500.00 payment on her tuition bill for her 1992 fall semester at Northwestern.

APPENDIX "J"
[EXCERPTS FROM APPELLANT'S OPENING BRIEF]
4 Civ. D036239

Filed
Oct 10, 2000
Court of Appeal Fourth District

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
IN AND FOR THE FOURTH APPELLATE DISTRICT
DIVISION ONE

In Re the Marriage of:	)
JEROME ZAMOS,	)
PETITIONER/APPELLANT,	)
and	)
PATRICIA KAY ZAMOS,	)
	)
APPELLÉE/RESPONDENT.	)

APPEAL FROM
THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO
THE HONORABLE
FEDERICO CASTRO/EDWARD B. HUNTINGTON
JUDGES
[SDSC # D 270609]

[EXCERPTS FROM]
APPELLANT'S OPENING BRIEF

LAW OFFICES OF JEROME ZAMOS
Jerome Zamos, State Bar 36246
21550 Oxnard Street, Suite 300
Woodland Hills, California 91367
Telephone: [818] 348-7151
Attorneys for APPELLANT/PETITIONER
JEROME ZAMOS [IN PRO PER]

SIGNIFICANT EXCERPTS FROM PETITIONER'S OPENING BRIEF

INTRODUCTION

This Appeal does not involve a father who abandoned his former spouse and children. It involves, as the court observed during the course of the hearing of June 19, 2000:

> **. . . A GUY THAT'S PAID HIS FREIGHT AND THAT PART DOESN'T SEEM TO BE DISPUTED . . . HE'S PAID A SIGNIFICANT CHUNK OF MONEY FOR EACH OF THE THREE GIRLS . AND A LOT OF WHAT WE ARE TALKING ABOUT IS AN INTERPRETATION OF THIS AGREEMENT . . . THERE'S A TERRIBLE PENALTY . . . THAT'S FAR BEYOND USURIOUS INTEREST [APP.APX. Exhibit "55" page D00547 lines 9 through 18 inclusive].**

This appeal involves an order entered in the Superior Court of the State of California for the County of San Diego [hereinafter referred to as "THE TRIAL COURT"] entered on June 27, 2000 [APP.APX. Exhibit "41" at pages D00456 through D00459 hereinafter referred to as "THE ENFORCEMENT ORDER"] which attempts to impose that "TERRIBLE PENALTY" in the form of a determination that APPELLANT/PETITIONER had a continuing obligation to pay support to APPELLEE/RESPONDENT during the eight (8) years following his last payment made in April of 1992 despite his claim that all his obligations to his former spouse under the terms of a marital settlement agreement [APP.APX. Exhibit "4" at pages D00019 through D00034 inclusive and hereinafter referred to as "THE 1982 MARITAL SETTLEMENT AGREEMENT] incorporated into the interlocutory decree entered on April27, 1982 [APP.APX. Exhibit "4" pages D D000012 through D000035 inclusive which is hereinafter referred to as "THE 1982 DECREE"] dissolving their marriage had been satisfied.

As set forth in the ENFORCEMENT ORDER the "TERRIBLE PENALTY" which THE TRIAL COURT

imposed upon APPELLANT/PETITIONER [because of the number of years which passed following the date APPELLANT\PETITIONER made what he believed was his last payment under the provisions of THE 1982 MARITAL SETTLEMENT AGREEMENT] in June of 2000 equals a total of $143,432.00 [which includes a fee of $12,184.00 payable to RESPONDENT'S counsel] plus interest [which if upheld by this court will add an additional $14,343.20 each year until it is finally discharged at some undefined date in the future].

That "TERRIBLE PENALTY" was imposed against APPELLANT/PETITIONER despite the fact that:

(a) No prior evidentiary hearing conforming with the due process requirements of Article I § 7 of the Constitution of the State of California or the Fourteenth Amendment to the Constitution had been either noticed or conducted to determine whether the imposition of the penalty under the provisions of THE 1982 MARITAL SETTLEMENT AGREEMENT was proper.

(b) APPELLANT/PETITIONER'S claimed that he had discharged all of his obligations to APPELLEE/RESPONDENT over eight (8) years prior to the hearings held in June of 2000; and

(c) APPELLANT/PETITIONER had no legal obligation to maintain records of his financial dealings with APPELLEE/RESPONDENT for the length of time that elapsed between his last payment to her and the filing of her application to enforce the obligations which she alleged remained outstanding after his last payment made to her in April of 1992.

During the course of the proceedings leading up to entry of THE ENFORCEMENT ORDER on June 27, 2000 THE TRIAL COURT was unwilling to believe APPELLANT/ PETITIONER because he was unable to produce any documentary evidence support his defenses as a result of the fact that:

(a) All of his records had been disposed of 1998 because

of the passage of time and their putrid condition after being drenched in raw sewage following the 1994 Northridge Earthquake [see ¶ 27 of the Declaration filed on April 21, 2000 in response to RESPONDENT'S APPLICATION APP.APX. Exhibit "28" at page D00289 line27 through 3 inclusive and the Supplemental Declaration filed with THE TRIAL COURT on June 14, 2000 (after the retention of counsel) APP.APX. Exhibit "33" at page D00333 line 27 through D00334 line 10 inclusive]; and

(b) There was no legal or statutory requirement under any provision of California or federal law which required APPELLANT/PETITIONER to maintain any records of his financial dealings with APPELLEE/RESPONDENT for more than the four (4) year period specified in the four (4) year period contained in the statute of limitations period specified in Code of Ccivil Procedure § 337 .

THE ORDER FROM WHICH THE PENDING APPEAL IS TAKEN

The pending appeal is taken from THE ENFORCEMENT ORDER entered in THE TRIAL COURT on June 27, 2000 [APP.APX. Exhibit "41" at pages D00456 through D00459] in response to APPELLEE/RESPONDENT'S application filed on March 23, 2000 [APP.APX. Exhibit "27" at pages D00226 through D00278 inclusive which is hereinafter referred to as "RESPONDENT'S APPLICATION"] in which she requested that the court enter an order based upon a hearing which had taken place over ten (10) years earlier on August 25, 1989 [see APP.APX. Exhibit "27" at page D00227] before the Honorable FEDERICO CASTRO .

RESPONDENT'S APPLICATION [APP.APX. Exhibit "27" at pages D00226 through D00278] was filed on March 23, 2000 based upon the fact that PETITIONER [who had made all his support payments through April 30, 1992], had allegedly failed to make payments to APPELLEE in connection with a series of non-support obligations [which were evidenced by a series of promissory notes] when they

came due in 1983 and 1984 [as set forth in the EIGHTH paragraph of THE 1982 MARITAL SETTLEMENT AGREEMENT which is found at APP.APX. Exhibit "4" pages D00026 through D00027 inclusive][see the transcript of the hearing of June 19, 2000 filed herein as APP.APX. Exhibit "56" at page D00507 lines 10 through 27 inclusive].

Notice of Appeal from THE ENFORCEMENT ORDER was filed and entered on July 19, 2000 [APP.APX. Exhibit "42" at D00460 through D00463 inclusive].

ISSUES RAISED BY THE PENDING APPEAL

1

DID THE BENCH OFFICER WHO ISSUED THE ENFORCEMENT ORDER ON JUNE 27, 2000 HAVE JURISDICTION OVER THE SUBJECT MATTER OF THE ISSUES COVERED BY THAT ORDER ?

2

DID THE TRIAL COURT HAVE JURISDICTION IN JUNE OF 2000 TO ENFORCE JUDGE CASTRO'S 1989 TENTATIVE RULING WHICH DIRECTED APPELLANT/PETITIONER TO MAKE SUPPORT PAYMENTS FOR THE BENEFIT OF HIS CHILDREN AFTER APRIL 20, 1989 ?

3

DOES CALIFORNIA LAW EXEMPT THE PROVISIONS OF A MARITAL SETTLEMENT AGREEMENT FROM THE ANTI-PENALTY AND FORFEITURE PROVISIONS CONTAINED IN THE CIVIL CODE OR ALLOW A PENALTY TO BE IMPOSED UPON A FORMER SPOUSE IN THE FORM OF CONTINUING OBLIGATION TO PROVIDE SUPPORT TO A FORMER SPOUSE ?

4

ARE THE NON-SUPPORT PROVISIONS OF A MARITAL SETTLEMENT AGREEMENT EXEMPT FROM THE PROVISIONS OF CODE OF CIVIL PROCEDURE § 337 WHICH REQUIRE THAT AN ACTION BASED UPON AN INSTRUMENT IN WRITING BE COMMENCED WITHIN FOUR YEARS ?

5

COULD APPELLANT/PETITIONER BE SUBJECTED TO A PENALTY FOLLOWING HIS ALLEGED DEFAULT UNDER THE 1982 MARITAL SETTLEMENT AGREEMENT IN THE ABSENCE OF A NOTICED HEARING CONDUCTED DURING THE LIMITATIONS PERIOD CONTAINED IN CODE OF CIVIL PROCEDURE § 337 IN ACCORDANCE WITH CONSTITUTIONAL STANDARDS UNDER BOTH STATE AND FEDERAL LAW ?

6

DID THE TRIAL COURT IMPROPERLY DENY APPELLANT/PETITIONER THE BENEFIT OF A LACHES AND OTHER DEFENSES BASED UPON APPELLEE/APPELLANT'S EIGHT (8) YEAR DELAY IN BRINGING ENFORCEMENT PROCEEDINGS ?

7

WAS APPELLANT/PETITIONER SUBJECTED TO A CONSTITUTIONALLY IMPROPER PROCESS IN WHICH HE WAS PENALIZED FOR NOT HAVING RECORDS WHICH THE LAW DID NOT REQUIRE HIM TO KEEP ?

ARE TRANSCRIPTS OF THE AUGUST 25, 1989 HEARING BEFORE JUDGE CASTRO REQUIRED IN ORDER IN ORDER TO PROPERLY EVALUATE THE UNDERLYING ORDER UPON WHICH THE ENFORCEMENT ORDER ENTERED BY JUDGE HUNTINGTON ON JUNE 27, 2000 WAS BASED ?

SIGNIFICANT UNRESOLVED CONSTITUTIONAL ISSUES RAISED BY PETITIONER IN HIS OPENING BRIEF FILED IN THE CALIFORNIA COURT OF APPEAL

APPELLANT/PETITIONER COULD NOT BE SUBJECTED TO A PENALTY FOLLOWING HIS ALLEGED DEFAULT UNDER THE 1982 MARITAL SETTLEMENT AGREEMENT IN THE ABSENCE OF A NOTICED HEARING CONDUCTED IN ACCORDANCE WITH THE CONSTITUTIONAL REQUIREMENTS SET FORTH IN BOTH THE STATE AND FEDERAL CONSTITUTIONS DURING THE LIMITATIONS PERIOD CONTAINED IN CODE OF CIVIL PROCEDURE § 337

Even if the penalty provisions of THE 1982 MARITAL SETTLEMENT AGREEMENT were enforceable under California law, under the due process standards contained in both Article I § 7 of the State of California and the Fourteenth Amendment to the Constitution of the United States APPELLANT/PETITIONER was entitled to notice and a constitutionally appropriate hearing establishing the existence of the triggering event before the penalty [in the form of a perpetual support obligation] could be effectuated.

see: **Snidach v. Family Finance Corp., 395 U.S. 337, 89 S.Ct. 1820 (1969); Goldberg v. Kelly, 397 U.S. 254 90 S.Ct. 1011 (1970); Randone vs. The Appellate Department 5 Cal.3d. 536 (1971)**

In the present action APPELLANT/PETITIONER had a reasonable expectation that his obligation to make payments to his former spouse would terminate in April of 1992. As evidence of his belief that his obligations to his former spouse would cease on that date evidence has been produced [by APPELLEE/RESPONDENT] that in the Spring of 1991 he advised one of his daughters [MARGARET ELLYN] of his intention of not making further payments to APPELLEE/RESPONDENT after April of 1992 which he described as "the end of the original agreement" [see APP.APX. Exhibit ""38" at page "D00429". While the issue of whether APPELLANT/PETITIONER was, or was not in default at the time he exercised what he appears to have described to his daughter as his rights under "the original agreement", those rights could not be constitutionally taken from him [particularly in the face of his claim that he was not in default] in the absence of a noticed hearing conducted in accordance with the due process standards contained in both Article I § 7 of the Constitution of the State of California and the Fourteenth Amendment to the Constitution of the United States during the limitations period contained in Code of Civil Procedure § 337 [particularly in view of the express prohibition against the enforcement of penalty clauses found in Civil Code § 3369]

Although THE TRIAL COURT suggested that it was APPELLANT/PETITIONER'S obligation to initiate that process [see APP.APX. Exhibit "56" at page D00497], under the reasoning of the United States Supreme Court in Snidach v. Family Finance Corp. and the California Supreme Court in Randone vs. The Appellate Department supra. the burden was on APPELLEE/RESPONDENT (as the creditor seeking to enforce a penalty following what she claimed was a default) not APPELLANT/PETITIONER [the debtor against whom the penalty could only be enforced after a noticed hearing].

Until the constitutional process mandated by both Snidach v. Family Finance Corp. and Randone vs. The Appellate Department supra. [which could not be waived prior to the actual default] had been initiated and completed APPELLANT/PETITIONER had no constitutionally enforceable obligation to make continuing support payments

to APPELLEE/RESPONDENT, for an undefined period extending perpetually into the future and any attempt by THE TRIAL COURT to enforce such a penalty over eight (8) years after the fact was beyond its jurisdiction.

Had APPELLANT/PETITIONER been provided with the opportunity to respond to APPELLEE/RESPONDENT before he believed he no longer had a need to maintain records of his financial dealings with her he could have provided THE TRIAL COURT with the records, including the original note which she now claims never existed.

THE TRIAL COURT IMPROPERLY DENIED APPELLANT/PETITIONER THE BENEFIT OF LACHES AND OTHER DEFENSES BASED UPON APPELLEE/APPELLANT'S EIGHT (8) YEAR DELAY IN BRINGING ENFORCEMENT PROCEEDINGS AND HIS LAWFUL DESTRUCTION OF RECORDS IN 1998 WHICH COULD HAVE SUBSTANTIATED HIS DEFENSES

At the commencement of the hearing of June 19, 2000 THE TRIAL COURT indicated from the bench that he would be relying upon the recently published decision in Marriage of Hamer 81 Cal.App.4th. 712 (May 18, 2000) which in THE TRIAL COURTS words:

> **. . . essentially puts the last nails in the coffin of the laches defenses, if there were any in existence before . . . [and] . . . The Legislature also made clear that lack of diligence can no longer be asserted or considered as the a defense to the enforcement of assert [sic] child support orders and the collection of arrears, and so on. [see APP.APX. Exhibit "56" page D00495 lines 5 through 16 inclusive]**

When APPELLANT/PETITIONER'S counsel continued in his attempt to have the court apply the doctrine of laches based upon the recent decisions of the Second and Fourth Appellate Districts in Marriage of Fogarty and Rasbeary 78 Cal.App.4th. 1353 (2000) and Marriage of Plescia 59 Cal.App.4th 252 (1997) [APP.APX. Exhibit "56" at page D00502 lines 1 through 12] based upon the fact that:

(a) APPELLEE/RESPONDENT had waited until eight (8) years after APPELLANT/PETITIONER had made his last payment and the documents which would have established his defense were no longer available because of a series of events which included a natural disaster which had severely damaged his payment records [APP.APX. Exhibit "56" page D00497 lines 11 through 16 inclusive];

(b) The financial institutions from which APPELLANT/PETITIONER had obtained the funds

to pay his obligations to APPELLEE/RESPONDENT and his daughter SUSAN do not maintain records for the length of time which passed between APPELLANT/PETITIONER'S last payment in April of 1992 [APP.APX. Exhibit "32" at page D00334 lines 11 through 20 inclusive, D00335 lines 4 through 14 inclusive, D00337 lines 16 through 28 inclusive and Exhibit "7" to APP.APX. Exhibit "32" at page D00357][APP.APX. Exhibit "56" at page D00500 lines 2 through 10 inclusive]; and

(c) APPELLANT/PETITIONER had disposed of records which he was not legally obligated to maintain at the time he moved his office in 1998 [see ¶ APP.APX. Exhibit "28" at page D00289 line 27 through D200290 line 3 inclusive].

THE TRIAL COURT RESPONDED to counsel's request with the following response:

> **I don't get the impression there's any laches doctrine left, and it seems the court seemed to be telling us this has always been the law [APP.APX. Exhibit "56" page D00502 lines 13 through 15 inclusive].**

In fact the published decision in Marriage of Hamer supra contained no such holding but instead recognized the continued availability of a laches defense on the very basis urged by APPELLANT/PETITIONER'S counsel as set forth at 81 Cal.App.4th. 723 with the observation:

> **. . . In 1997, the Fourth Appellate District held that, despite the "substantive and significant" changes in the statutory provisions governing enforcement of child and spousal support orders (In re Marriage of Garcia, supra, 67 Cal.App.4th at p. 698, fn. 4, 79 Cal.Rptr.2d 242), the defense of laches is still available to thwart a stale attempt at enforcement of a judgment for past due spousal support. (In re Marriage of Plescia (1997) 59 Cal.App.4th 252, 258, 262, 69 Cal.Rptr.2d 120.) In re Marriage of Fogarty & Rasbeary (2000) 78 Cal.App.4th 1353, 93 Cal.Rptr.2d 653, Division Two of the Second Appellate**

District extended the holding of In re Marriage of Plescia to the collection of child support arrearages. (Id. at pp. 1360—1364, 93 Cal.Rptr.2d 653 . . .)[emphasis added].

Further, despite THE TRIAL COURT'S June 19, 2000 suggestion concerning the unavailability of a laches defense in a hearing which seeks an award based upon arrears in past due support payments on August 8, 2000 Division 2 of this District observed in Marriage of Dancy 82 Cal.App.4th 1142 (August 8, 2000) at 82 Cal.App. 1147-1148:

> **Recently In re Marriage of Fogarty & Rasbeary (2000) 78 Cal.App.4th 1353, 1356, 1363, 93 Cal.Rptr.2d 653 (" Fogarty "), the Second District Court of Appeal concluded that laches is available as a defense in a belated action for past due child support "[i]n view of the facts that the defense of laches has historically been applied to California child and spousal support judgments, that the Legislature did not specifically rule out the defense of laches, and that it appears the Legislature, in considering the proposed legislation, believed laches would still be available as a defense Upon analysis, we concur with and adopt the holding in Fogarty.**
>
> **A. Laches as a Defense Against the Collection of Child Support Arrearages.**
>
> **Fogarty 's conclusion was an extension of our holding in In re Marriage of Plescia (1997) 59 Cal.App.4th 252, 69 Cal.Rptr.2d 120 ("Plescia") that the defense of laches is available to thwart a stale attempt to enforce a judgment for past due spousal support. (Fogarty, 78 Cal.App.4th 1353, 1356, 93 Cal.Rptr.2d 653.) In Plescia, we explained that "[t]he defense of laches is derived from the maxim that ' [t]he law helps the vigilant, before those who sleep on their rights.' (Civil Code § 3527.) This has been restated as ' [equity frowns upon stale demands [and] declines to aid those who have slept on their rights.' [Citation.] [B] In practice, laches is defined as an unreasonable delay in asserting an equitable right, causing prejudice to an adverse party such as to render**

the granting of relief to the other party inequitable. [Citation.] Thus, if a trial court finds (1) unreasonable delay; and (2) prejudice, and if its findings are not palpable abuses of discretion, a finding of laches will be upheld on appeal." (Plescia, at p. 256, 69 Cal.Rptr.2d 120.) Fogarty describes the doctrine of laches in like terms. (Fogarty, at p. 1359, 93 Cal.Rptr.2d 653.)[emphasis added].

Perhaps the most troublesome aspect of THE TRIAL COURT'S refusal to consider APPELLANT/PETITIONER'S laches and statute of limitations defenses in the enforcement proceedings in this case is the additional due process issues which the denial of those defenses raises in this case. It is the obvious lack of due process which occurred in THE TRIAL COURT and the fundamental unfairness which results when a party [who has long ago come to believe that there is no continuing need to maintain records of a past he would just as soon put behind] is denied the opportunity to defend himself because the records which THE TRIAL COURT insists he produce are no longer available [because of an act of God, the passage of time and their legal disposal after the law no longer required them to be kept] which give rise to the pending appeal.

APPELLANT/PETITIONER WAS SUBJECTED TO A CONSTITUTIONALLY IMPROPER PROCESS IN WHICH HE WAS PENALIZED FOR NOT HAVING RECORDS WHICH THE LAW DID NOT REQUIRE HIM TO KEEP

Despite the lack of any obligation on APPELLANT/PETITIONER'S part to maintain any documentary evidence of the financial dealings he had with RESPONDENT/APPELLANT over eight (8) years ago he now finds himself faced with the prospect of a judgment in the principal amount of $143,432.00 [which will accrue an additional $14,343.20 annually in interest] because he can no longer prove that he made a series of payments to RESPONDENT during either late 1990 or early 1991 and THE TRIAL COURT believes PETITIONER lacks credibility because as an attorney:

(a) He took no action to establish his performance in late 1990 or early 1991 [despite the fact that the law did not at the time require such action, does not presently require such action, and the court did not describe what action it believed would have been appropriate];

(b) Despite any legal obligation to maintain records for indefinite periods of time, he has no receipts for the payments he claimed to have made to APPELLEE/RESPONDENT in either late 1990 or early 1991 after his current spouse and he obtained a line of credit in connection with the establishment of his recommencement of his practice as a sole practioner [see ¶ 29 of The Responsive Declaration Filed by APPELLANT/PETITIONER on April 21, 2000 APP.APX. Exhibit "28" at page D00290 line 28 through page D00291 line 5 inclusive and the Supplemental Declaration filed on June 14, 2000 APP.APX. page D00334 line 22 through page D00335 line 14 inclusive].

Ironically, while THE TRIAL COURT appeared to reject out of hand APPELLANT/PETITIONER'S lack of documentation [which was a result of the passage of time and the occurrence of one of the most severe natural disasters to

occur in Southern California during the last half of the twentieth century], THE TRIAL COURT paid little attention to APPELLEE/RESPONDENT'S corresponding lack of documentation [as evidenced by her counsel's fleeting reference to his client's non-possession of the note which he claimed (in violation of the parol evidence rule) never existed (see APP.APX. Exhibit "56" pages D00526 lines 15 through 16 inclusive)].

With the APPELLEE/RESPONDENT unable to produce the original promissory note which was executed and delivered simultaneously with the execution of THE 1982 MARITAL SETTLEMENT AGREEMENT [see APP.APX. Exhibit " 4" page D00026] was it reasonable to place the burden of producing records on APPELLANT/PETITIONER:

- **(a) Four (4) years after the statute of limitations for enforcing obligations evidenced by instruments in writing had run,**
- **(b) After his records had been damaged as a result of a natural disaster, and**
- **(c) After he had made the legal decision to dispose of whatever sewage ravaged records he still had two (2) years after the statute of limitation under Code of Civil Procedure § 337 had run.**

At the same time, is it reasonable to place that burden of proof on APPELLANT/PETITIONER and allow THE TRIAL COURT to ignore the fact that APPELLEE/RESPONDENT is unable to produce the original of the promissory note she is trying to enforce [which her counsel in violation of the parol evidence rule claims never existed despite the written statement in THE 1982 MARITAL SETTLEMENT to the contrary [APP.APX. Exhibit "4" at page D00026].

One of the most fundamental concepts of due process is that no person may be punished for failing to do that which no law compels him to do. The concept is so fundamental to our constitutional system that it finds its earliest expression in Justice Chase's historic decision in Calder v. Bull 3 U.S. (3

Dall.) 386, 391 (1798). In that decision Justice Chase traced the origins of the constitutional prohibition against acts of government which punishes innocent behavior after the fact to our founding fathers' fear of the *ex post facto* actions taken by the seventeenth century English parliament (see 3 U.S. 389).

The underlying constitutional principles laid down by Justice Chase in Calder v. Bull supra which prohibits any post conduct condemnation of conduct which is legal at the time it takes place has been restated by both state and federal courts over the years. In Collins v. Youngblood supra the Court reiterated at 497 U.S. 42, 110 S.Ct. 27 Justice's condemnation of legislative acts which "punishes as a crime an act previously committed, which was innocent when done" is unconstitutional and cannot be enforced by a Court.

Although the *ex post facto* issues addressed by the Court in Calder v. Bull and Collins v. Youngblood supra are more commonly raised in the context of criminal law, as the Court observed in Kreisher vs. Mobile Oil Corporation 198 Cal.App.3d. 389, 402 (1988):

> One of the fundamental purposes of law is to provide stability. The announcement of a legal principle, whether by the Legislature or by the courts, furnishes notice of what is either allowed or prohibited. Such notice is the most elemental requirement of due process.

While many people may find it appropriate to maintain records for extended periods of time which extend beyond the state's statute of limitations for the enforcement of obligations based on instruments in writing, there is nothing in the law of this state which requires a person who wants to put the memories of a failed marriage behind him to maintain the records of that relationship indefinitely. Indeed there may be a substantial argument made for the therapeutic benefits of disposing of such records as a means of letting go of the past and getting on with one's life (particularly where as a result of an unanticipated act of nature those records have been drenched in raw sewage and become putrid during the course of their continued storage).

Although there appear to be few cases which deal with the precise issue present in the context of the present case, the concept is fairly straight forward and illustrated by the observation of the District Court in Ashcraft v. Shenango Furnace Co. 56 F.Supp.2d 895 (N.D.Ohio 1999) in footnote 8 at 56 F.Supp.2d. 902:

> **The Court does not see, and plaintiff does not address, how defendants may be held liable for failing to produce information they were not required to keep.**

In a similar, but more direct discussion of the record destruction issue an Illinois Court in The Estate of Adolph Fantozzi v. Lake View Trust and Savings Bank 183 Ill.App.3d 732, 736-737, 539 N.E.2d 340, 343-344 (Ill.App. 1988) held that where a claim was made against a bank on an obligation it had to a depositor after the bank was legally entitled to destroy its records the institution could rely upon a presumption that the obligation had been discharged prior to the legal destruction of the records of its performance.

Although the Illinois Court declined at 183 Ill.App.3d 738, 539 N.E.2d 344 to comment on the length of time the bank should have been required to keep records (observing that the Uniform Preservation of Private Business Records Act enacted in Illinois provided for a three year period for the preservation of private business records) it did express the belief that the duty to maintain records had its limits.

The same issue is raised by the Court in the present case in which neither APPELLEE/RESPONDENT or the court below have cited any authority which required APPELLANT/PETITIONER to maintain records for a period of eight (8) years after he had stated to RESPONDENT /APPELLANT and his adult children that he believed he had satisfied all of his financial obligations under THE 1982 MARITAL SETTLEMENT AGREEMENT. The question which this court must, therefore, address [before it allows any further efforts to enforce a "TERRIBLE PENALTY" based upon a default which has continued for a period in excess of the period

during which the law required APPELLANT/PETITIONER to maintain records related to a failed marriage] is how any further proceedings in this case can take place without violating APPELLANT/PETITIONER'S due process rights under both Article I § 7 of the Constitution of the State of California and the Fourteenth Amendment to the Constitution of the United States of America?

APPENDIX "K"

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

In re the Marriage of:)Case No.: D 270609
Petitioner: JEROME ZAMOS)
and)
Respondent: PATRICIA ZAMOS)

PARTIAL TRANSCRIPT OF HEARING OF DECEMBER 7, 2000

PAGE 9:

FIRST OF ALL, IF I DON'T HAVE THE ABILITY, NOT NECESSARILY INCOME I AM NOT HERE I AM NOT GOING TO CRY POVERTY. I DON'T HAVE A HUGE INCOME. I RECOGNIZE THAT. I RECOGNIZE THAT THAT'S A RESULT OF A NUMBER OF CONSCIOUS DECISIONS THAT I HAVE MADE OVER THE LAST SEVEN OR EIGHT YEARS AND PARTICULARLY IN THE LAST TWO OR THREE. I HAVE MADE A CONSCIOUS DECISION THAT I FUNCTION AS A SOLE PRACTITIONER. I HAVE NO STAFF OTHER THAN I CURRENTLY HAVE AN ASSISTANT BECAUSE OF VARIOUS EXIGENCIES THAT I AM CONFRONTED WITH. I NOW HAVE CANCER. I AN NOW SCHEDULED TO

HAVE MAJOR SURGERY TO REMOVE HALF OF MY COLON ON
JANUARY 21. 1 AM TOLD THAT UNTIL THAT SURGERY IS
COMPLETED, THAT THERE IS REALLY NO WAY OF KNOWING
HOW FAR –
MR. SPIEVAK: I AM GOING TO OBJECT.
MR. ZAMOS: THAT'S NOT HEARSAY. I DO, IN
FACT, KNOW THAT I HAVE COMMITTED TO BEING IN THE
HOSPITAL. AND WHETHER MR. SPIEVAK AND MY FORMER
WIFE WANT TO ARGUE WITH MY CANCER OR NOT, IT IS A
FACT THAT I HAVE TO LIVE WITH. IT IS A FACT THAT
SIGNIFICANTLY IMPACTS MY DECISION AS TO HOW I RUN
MY PRACTICE PERHAPS FOR THE NEXT YEAR.

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NOW, MR. - SO SPIEVAK MAY SAY THAT I
CAN'T SAY THAT I HAVE CANCER, BUT I DO HAVE THE
RIGHT TO ARGUE TO THE COURT THAT IT IS REASONABLE,
BASED UPON THE MEDICAL INFORMATION THAT HAS BEEN
PROVIDED TO ME, INCLUDING A PATHOLOGY REPORT THAT
CONFIRMS THE PRESENCE OF AN ADENOID CARCINOMA IN MY
ASCENDING COLON, FOR ME TO DESIGN MY LIFE IN A

SPECIFIC WAY. THAT IS A REASONABLE DECISION, AND
THAT IS A REASONABLE BASIS FOR DOING.
I WOULD LIKE TO BE A 1ThE TO ARGUE WITH MY
PHYSICIANS THAT MY CANCER IS A MATTER OF HEARSAY.
I WISH THAT WERE A SIMPLE THING, BUT THE TRUTH IS
THAT I HAVE BEEN REQUIRED TO DISCHARGE MY OWN
ATTORNEY. AND I THINK THAT BEFORE I CAN BE
REQUIRED BEFORE I CAN BE REQUIRED TO PAY FOR MY
ADVERSARY'S COUNSEL, YOU HAVE GOT TO ALLOW ME
SUFFICIENT FUNDS TO PAY FOR MY OWN ATTORNEY.
NOW, THE ONLY WAY THAT I HAVE BEEN ABLE
TO FUND MY OWN ATTORNEY IS INITIALLY I SETTLED A
SIGNIFICANT CASE, WHICH IS THE WAY MY LIFE IS IN
THE END OF MARCH. I COLLECTED SOME MONEY IN APRIL.
IT IS MY PRACTICE TO LIVE OFF CREDIT CARDS.
THE COURT: THAT WAS THE 120,000 ROUGHLY.
MR. ZAMOS: IT WAS ACTUALLY WITH FEES
AND COSTS, IT WAS ABOUT 150, $160,000.
THE COURT: OKAY.
MR. ZAMOS: NOW, THE PROBLEM I HAVE, AS I
SAID, I AM NOT COMPLAINING ABOUT MY ABILITY TO

SUSTAIN MYSELF. AND YOU KNOW THERE ARE THOSE OF US
WHO SAY, YOU KNOW, WHAT? YOU ARE A LAWYER. YOU
SHOULD KNOW BETTED THEN TO LIVE OFF CREDIT CARDS.
WELL, HERE IS THE PROBLEM I HAVE. I HAVE
LOUSY CREDIT. FOR SOME REASON OVER THE PAST YEARS,
AT VARIOUS POINTS IN MY LIFE, I HAVE GOTTEN
UNSOLICITED CREDIT CARDS. ON ONE OCCASION THE ONLY
WAY I WAS ABLE TO PAY FOR MY DAUGHTER'S TUITION AT
S.C. WAS BECAUSE I WAS UNEMPLOYED. I WAS OUT OF
WORK AND GUESS WHAT CAME IN THE MAIL? A CREDIT
CARD THAT GAVE ME THE ABILITY TO PAY HER TUITION.
NOW, I TEND TO RUN UP HUGE CREDIT CARD BALANCES.
THE COURT; I WAS LOOKING.
MR. ZAMOS: THERE ARE LARGER THAN THAT.
AND BY THE WAY, THEY DO NOT – BECAUSE OF THE WAY I
PRACTICE LAW, THEY DO NOT INCLUDE MY WEST LAW BILL.
I DON'T HAVE AN ASSOCIATE, BUT I DO RUN BETWEEN 15
AND $25,000 A YEAR BECAUSE OP THE NATURE OF MY
PRACTICE IN WEST LAW BILLS.
THE COURT: ALL RIGHT. WHAT I WAS

REFERRING TO ON PAGE 20 OF YOUR DECLARATION, YOU HAVE LISTED CREDIT CARDS THAT TOTAL BETWEEN 32 AND $33,000,

MR. ZAMOS: THAT WAS AS OF?

THE COURT: THAT WAS IN OCTOBER 19.

MR. ZAMOS: AND THEY HAVE INCREASED SINCE THEN, BUT THAT GAVE YOU A STARTING POINT.

I ALSO POINTED OUT THAT I HAVE A TRIAL.

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I HAVE USED UP ALL OF MY RESOURCES BECAUSE FOR BETTER OR WORSE, I HAD AN OBLIGATION. AND I DO TRY TO MEET MY FINANCIAL OBLIGATIONS ANY WAY I CAN.

AND AN OBLIGATION, I RETAINED MR. SHEA TO REPRESENT ME, AND I OWED HIM MONEY. AND IT WAS MY OBLIGATION BECAUSE I OWED HIM MONEY TO FIGURE MAKE IT MY PROBLEM NOT HIS BECAUSE THAT'S THE WAY I FUNCTION.

THAT'S THE WAY I HAVE ALWAYS FUNCTIONED. THAT'S THE WAY I HAVE FUNCTIONED WITH RESPONDENT. THAT'S THE WAY I HAVE ALWAYS BEEN. I SOMETIMES GET BEHIND, BUT I ALWAYS AT THE END PAY THE BILLING

12 THE COURT: I READ THE TRANSCRIPT OF
13 THOSE PRIOR PROCEEDINGS. YOU REPRESENT THAT YOU
14 TOOK THE MONEY IN A CREDIT CARD AND PAID IT?
15 MR. ZAMOS: I HAVE DONE THAT. NOW, THAT
16 MEANS I PAY EXTRAORDINARY INTEREST CHARGES,
17 EXTRAORDINARY INTEREST CHARGES. AND AS I SAID, A
18 LOT OF PEOPLE WOULD SAY YOU ARE IRRESPONSIBLE WITH
19 THE WAY YOU HANDLE MONEY, INCLUDING MY WIFE, MY
20 CURRENT WIFE. BUT WHAT I HAVE BEEN FORTUNATE
21 ENOUGH TO BE ABLE TO DO IS PERIODICALLY MAYBE EVERY
22 YEAR, MAYBE EVERY 18 MONTHS ALONG COMES ONE OF
23 THESE FEES. AND I ONLY HAVE MAYBE FIVE OR SIX
24 CASES BECAUSE I HAVE MADE A CONSCIOUS DECISION THAT
25 THE TYPE OF LAW THAT I PRACTICE REQUIRES THAT I PUT
26 A GREAT DEAL OF EFFORT OUT FOR MY CLIENT'S, AND I
27 DO. I TAKE CASES THAT OTHER PEOPLE DON'T. I TAKE
28 CASES THAT FREQUENTLY I LOST BECAUSE I BELIEVE IN

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1 THEM. I TAKE CASES. AND IF I TAKE A CASE, I

APPEAL IT TO THE UNITED STATES SUPREME COURT IF NECESSARY. NOW, MR. SPIEVAK SUGGESTED THIS MORNING THAT HE WONDERED IF I REPRESENT MY CLIENTS IN THE SAME MANNER THAT I AM REPRESENTING MYSELF IN THIS CASE, AND THE ANSWER IS ABSOLUTELY YES. THAT'S THE WAY I PRACTICE LAW. AND I PRACTICE CLOSE TO 24 HOURS A DAY, AND I CAN'T DO IT MUCH LONGER SO HERE IS WHERE I AM TODAY. AND THERE IS A PRACTICAL QUESTION THAT THE COURT I DON'T KNOW WHETHER THE COURT HAS ADDRESSED. I HAVE A TRIAL COMING UP. THIS WAS ORIGINALLY SET TO GO TO TRIAL ABOUT A YEAR AGO. IT'S A CASE AGAINST AMERICAN HONDA. IT'S AN EMPLOYMENT CASE AGAINST AMERICAN HONDA AND A MAINTENANCE COMPANY CALLED ONE SOURCE I DON'T KNOW WHETHER YOU HAVE HEARD OF ONE SOURCE. THEY ARE A HUGE NATIONAL MAINTENANCE COMPANY. THAT CASE WAS ORIGINALLY SET TO GO TO TRIAL IN APRIL OR MAY OF 1999. WE INITIALLY GOT REFERRED OUT IN LOS

ANGELES, IF YOU ARE FAMILIAR WITH THE PROCEDURE AND
THE STRUCTURE. THEY HAVE WHAT IS CALLED CENTRAL
CIVIL WEST, WHICH WAS NOT PROPERLY FUNDED BECAUSE
OF A DISPUTE OVER COURT UNIFICATION, DURING THE
BALANCE OF 1999 . WITH COURT UNIFICATION, THEY HAVE
REFUNDED IT, BUT IN THE INTERIM WE EXPANDED THE
CASE TO INCLUDE ADDITIONAL CAUSES OF ACTIONS AND

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CLAIMS UNDER CALIFORNIA'S FAIR EMPLOYMENT AND
HOUSING ACT, WHICH RESULTED IN TWO CASES BEING
CONSOLIDATED. IT'S CURRENTLY A 25-DAY CASE. I
DON'T TAKE A LOT OF CASES, AND I DON'T TAKE HUGE
RETAINERS FROM CLIENTS BECAUSE REPRESENT PEOPLE
WHO I BELIEVE IN SO I GOT ABOUT FROM TWO PLAINTIFFS
$750 IN FEES BECAUSE THAT'S ALL THEY COULD AFFORD.
NOW, HERE WE ARE. THEY MAKE ABOUT
$40,000 APIECE, AND THE QUESTION IS THEY, LIKE MANY
OF THE REST OF US IN THIS COURTROOM, DON'T SAVE A
LOT OF MONEY SO THEY DON'T HAVE A LOT OF MONEY TO

12 ADVANCE FOR JURY FEES.
13 NOW, I HAVE A CHOICE. YOU MAKE YOUR
14 ORDER. I DON'T HAVE THE MONEY. I HAVE CREDIT
15 CARDS. I HAVE ENOUGH CREDIT TO TAKE CARE OF MY
16 NEEDS BARELY AND DRAW DOWN IN APRIL IF WE GO TO
17 TRIAL THE MONEY FROM THE CREDIT CARDS TO PAY FOR
18 JURY FEES. I AM A LAWYER. I TARE MY
19 RESPONSIBILITIES TO THOSE CLIENTS SERIOUSLY. AND I
20 UNDERSTAND THAT YOU HAVE SUGGESTED YOU'RE GOING TO
21 MAKE A $7,500 ORDER, AND I AM NOT TRYING TO BE
22 CUTE. I AM JUST GOING TO LOOK AT THIS THING, AND I
23 THINK THE COURT HAS TO LOOK AT THIS THING AND SAY
24 WHAT ARE WE DO I NG?
25 ASSUME FOR THE SAKE OF ARGUMENT YOU MAKE
26 A $7,500 ORDER AGAINST ME, NOT TRYING TO CHALLENGE
27 YOU. I AM JUST TRYING TO HAVE YOU APPRECIATE THE
28 CHOICES I HAVE. I HAVE TWO CHOICES. I CAN DRAW

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1 DOWN MY $7. 500, PAY IT TO MR. SPIEVAK AND
2 MR. TEMKO AND NO LONGER HAVE THE MONEY O PAY FOR
3 THE JURY OR I CAN. SAY I MADE A

COMMITMENT TO MY
CLIENT; MADE A COMMITMENT TO MY EX-SPOUSE TO GIVE
HER SUPPORT THROUGH APRIL 30, 1992, NOT BEYOND,
AND I BELIEVE I HONORED THAT.
DO I HAVE A MORAL, LEGAL, OR ETHICAL
OBLIGATION TO DRAW DOWN $7,500 TO PAY MR. SPIEVAK
AND MR. TEMKO IN ORDER TO CHALLENGE MY APPEAL IN
WHICH I SAY THEY DON'T HAVE ANY RIGHT TO SUPPORT AT
ALL, AND THAT THIS COURT DOESN'T HAVE JURISDICTION?
SO THERE IS THE THRESHOLD QUESTION.
THE NEXT QUESTION IS AND I WOULD LIKE
YOU TO LOOK AT A CASE BECAUSE IT'S NOT A FAMILY LAW
CASE, BUT IT DEALS WITH THE BOTTOM LINE IN THIS
CASE, AND I HAD PREVIOUSLY CITED IT TO JUDGE
HUNTINGTON MARCUS HOOD VERSUS SUPERIOR COURT
IT'S A SECOND APPELLATE DISTRICT CASE, MIRIAM VOGEL
(PHONETIC). AND IT RAISES THE FOLLOWING ISSUE.
THIS INVOLVES A CASE IN WHICH THE COURT SAYS THE
PLAINTIFF MUST PUT OUT MONEY TO PAY FOR A REFEREE.
NOW, THERE ARE A WHOLE LINE OF CASES THAT SUGGESTED
THAT MAYBE A COURT DOES OR DOESN'T HAVE THAT

24 JURISDICTION.
25 THE COURT: I AM FAMILIAR.
26 MR. ZAMOS: WHAT IS THE REMEDY?
27 NOW, AS A PRACTICAL MATTER, HERE IS WHERE
28 WE ARE GOING –

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1 THE COURT: BUT THAT CASE SAYS, DOES IT
2 NOT, JUST SO WE ARE ON THE SAME PAGE, THAT YOU
3 CAN'T DO THAT TO SOMEONE IF THEY DO NOT HAVE THE
4 ABILITY TO PAY FOR IT?
5 MR. ZAMOS: NO. IT GOES ONE STEP
6 FURTHER. INTERESTINGLY ENOUGH, THERE ARE A LOT OF
7 SIMILARITIES BECAUSE MS. HOOD WAS AN ATTORNEY WHO
8 SAID I DON'T HAVE ENOUGH MONEY. THE COURT SAID
9 BRING IN YOUR INCOME TAX RETURNS. THE ATTORNEY
10 SAID YOU CAN'T MAKE ME BRING IN MY ATTORNEY FEE
11 MY INCOME TAXES BECAUSE THEY ARE PRIVILEGED UNDER
12 THE REVENUE AND TAXATION CODE SO WE HAVE GOT A
13 PARALLEL THERE, BUT THEN IT GOES THE NEXT STEP AND
14 THE COURT THE LOS ANGELES SUPERIOR COURT SAID
15 HERE IS MARCUS, AND HE IS NOT GOING TO PAY HIS
16 MONEY. WHAT DO WE DO?
17 WELL, I GUESS IT' S LIRE THE SAME

QUESTION
THEY ASKED OF THE FLORIDA SUPREME COURT THIS
MORNING WHERE THE FLORIDA SUPREME COURT SAID WHAT
ARE THE REMEDIES IN THIS? WHAT ARE THE REMEDIES?
NOW, AS A PRACTICAL MATTER, YOU CAN MAKE
THIS ORDER. I CAN TAKE IT UP AGAIN ON A WRIT, BUT
THE PRACTICAL ISSUE IS THAT I DON'T HAVE THE MONEY
TO EXECUTE AGAINST. THERE ARE NO EXECUTABLE ASSETS
SO THE ONLY WAY I CAN GET THIS MONEY IS BY GOING
INTO CREDIT CARDS. I DO NOT HAVE THE MONEY.
PERIOD. THEY DON'T DISPUTE THAT. IT'S IN MY
DECLARATIONS. THEY HAVEN'T EVEN OBJECTED TO THOSE.

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PORTIONS OF THE DECLARATIONS SO IF I DON'T HAVE THE
MONEY AND IF YOU WANT I CAN GO THROUGH THE
DECLARATIONS. I HAVE TOLD THEM I HAVE EXPLAINED
TO THEM, I HAVE SET OUT BOOK, PAGE, AND VERSE
ABSOLUTELY WHERE MY MONEY IS. I DON'T HAVE MONEY
IN BANK ACCOUNTS, MAYBE HAVE A

COUPLE OF HUNDRED
BUCKS.
WHEN I NEED MONEY RIGHT NOW, I WRITE
CREDIT CARD CHECKS, DEPOSIT IT INTO MY PETTY CASH
FUNDS OR MY OVERHEAD ACCOUNT, AND I GO FROM THERE.
I DON'T THINK YOU HAVE THE JURISDICTION TO FORCE ME
TO BORROW MONEY. AND I DON'T THINK YOU HAVE THE
JURISDICTION TO FORCE ME TO USE CREDIT LINES -- —
EXPENSIVE CREDIT LINES THAT I AM PRESERVING FOR THE
BENEFIT OF A CLIENT OR TWO CLIENTS IN ORDER TO
ASSIST THE RESPONDENT, DEFEND IN A CASE THAT SHE
INITIATED. I DID NOT COME TO THIS COURT, I DIDN'T
ASK TO BE HERE. SHE DECIDED SHE WANTED TO BRING
THIS THING. I HAVE BEEN SITTING AROUND 8 YEARS
BELIEVING THAT EVERY PENNY THAT I OWED THIS WOMAN
HAD BEEN PAID.
THE COURT: WELL, WHETHER RIGHT OR WRONG,
THE APPELLATE COURT IS GOING TO TELL US THAT
PRESUMABLY. WHETHER RIGHT OR WRONG, THOUGH, SHE
PREVAILED. IN OTHER WORDS, THEY -- JUDGE
HUNTINGTON AGREED THAT SHE WAS OWED

MONEY, AND YOU
LOST ON THAT. ALL RIGHT.
MR. ZAMOS: NO, I HAVEN'T.

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THE COURT: NOW, THE QUESTION IS -- AT
THE TRIAL LEVEL YOU DID.
AND THE QUESTION REMAINS. ARE YOU
ULTIMATELY GOING TO PREVAIL OR NOT,
BUT THE - -
YOU I DISAGREE WITH YOUR
CHARACTERIZATION OF
THIS BECAUSE SHE DID INITIATE THE
ACTION AND THAT
IS TRUE, BUT THE ACTION NOW THAT
I AM BEING ASKED
TO ORDER FEES FOR IS TO DEFEND
AGAINST YOUR ACTION
OF APPEALING.
MR • ZAMOS: NO IT ISN'T. AND HERE IS
THE REASON WHY. THERE IS AN INTERESTING
THING
AGAIN THAT CAME UP IN THE FLORIDA
SUPREME COURT.
THE FIRST QUESTION THIS MORNING
FROM THE BENCH WAS
IN FLORIDA, INTERESTINGLY ENOUGH, THE
RIGHT TO
APPEAL APPARENTLY ARISES UNDER THE
CONSTITUTION
WHICH CREATES CERTAIN JURISDICTIONAL
ISSUES UNDER
ARTICLE II.
IN CALIFORNIA, THE RIGHT TO APPEAL
ARISES
LEGISLATIVELY, AND THE LEGISLATURE IN

CALIFORNIA
HAS SAID THAT IF YOU FILE A NOTICE OF APPEAL, THAT
STAYS THE EFFECT OF THE APPEAL FROM JUDGMENT. SO
WHILE IT MAY TO A LAYMAN SEEM LIKE WE HAVE
COMPLETED ONE PHASE OF THE PROCESS, UNDER
CALIFORNIA PROCEDURE IT IS A CONTINUUM THAT STARTS
AND IS NOT FINAL UNTIL REVIEW IS DENIED BY THE
CALIFORNIA SUPREME COURT. THAT'S WHAT
DISTINGUISHES CALIFORNIA PROCEDURE FROM FEDERAL
PROCEDURE. THAT'S WHERE WE DEAL WITH IT MOST.

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THE COURT: I THINK WE ARE DIGRESSING,
BUT I DO NOT AGREE WITH THAT ANALYSIS. IN OTHER
WORDS, IN MY OPINION, THE ENFORCEMENT OF THE
JUDGMENT IS NOT AUTOMATICALLY STAYED BY YOU FILING
AN APPEAL.
MR. ZAMOS: IT IS EXCEPT FOR ONE THING.
IT IS STAYED EXCEPT FOR HER RIGHT, AND THIS IS
WHERE WE GO BACK TO HOOD AND HERE IS THE PROBLEM.
IT IS STAYED EXCEPT IN THE EXTENT THAT IT CAN BE
DETERMINED TO BE A MONEY JUDGMENT.

NOW, LET'S
ASSUME THAT IT'S A MONEY JUDGMENT.
THE COURT: WELL. IT IS.
MR. ZAMOS: WELL, I WOULD TAKE ISSUE.
IT'S LIKE - -
THE COURT: BUT YOU ARE TAKING ISSUE WITH
VIRTUALLY EVERYTHING HERE AND RAISING
CONSTITUTIONAL QUESTIONS, BUT I THINK THIS IS NOT
HELPFUL TO ME, THIS ARGUMENT RIGHT NOW, BECAUSE
THIS IS CLEARLY A MONEY JUDGMENT IN MY VIEW
MR. ZAMOS: OKAY. EXCEPT
THE COURT: SO LET'S - - RATHER THAN TALK
ABOUT THE FLORIDA SUPREME COURT AND OTHER THINGS
THAT, IN MY VIEW, ARE NEITHER BRIEFED NOR RELEVANT
TO THIS PROCEEDING, I WOULD LIKE YOU TO TAKE INTO
ACCOUNT THAT I HAVE READ ALL OF THIS, TO STICK TO
THE POINT AND - -
MR. ZAMOS: LET'S GET TO THE BOTTOM LINE
AS IN HOOD.

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IN HOOD, THE COURT SAID WE ARE GOING TO
MAKE AN ORDER, PAY "X" DOLLARS TO SOMEBODY. THE
PLAINTIFF SAYS I DON'T HAVE "X" DOLLARS. I AM NOT
GOING TO PAY. THE SUPERIOR COURT SAID

WE ARE GOING
TO DISMISS YOUR LAWSUIT. THE COURT OFF APPEAL SAID

YOU CAN'T DO THAT. THERE IS ONLY ONE REMEDY AND
HERE IS WHERE THE PROBLEM COMES. IF THIS IS A
MONEY JUDGMENT, THERE IS BUT ONE REMEDY UNDER
CALIFORNIA LAW. YOU CAN'T INTERFERE WITH
MY APPELLATE RIGHTS. THE ONLY THING YOU CAN DO IS YOU
CAN ISSUE AN ORDER IN WHICH YOU ORDER ME TO PAY
$7,500.
THE SOLE REMEDY THAT MR. SPIEVAK HAS ON
BEHALF OF RESPONDENT IS HE CAN TAKE THAT ORDER AND
HE CAN GO DOWN TO THE CLERK'S OFFICE AND HE CAN GET
A WRIT OF EXECUTION. HE CAN'T USE IT TO GET AN
EXTENSION OF TIME TO FILE HIS BRIEF UNTIL I PAY THE
MONEY BECAUSE HOOD SAYS THAT'S A VIOLATION OF DUE
PROCESS. HE CAN'T DO THAT.
THE ONLY THING HE CAN DO IS HE CAN GO
OVER TO THE CLERK'S OFFICE, IF YOU ISSUE THIS
ORDER, HE CAN IN TURN GET WHAT IS CALLED A WRIT OF
EXECUTION AND THEN HE CAN GO OUT AND HE CAN'T

24 EXECUTE AGAINST A CREDIT LINE. HE CAN EXECUTE
25 AGAINST BANK ACCOUNTS, AND I DON'T HAVE ANY MONEY
26 IN THEM.
27 THE COURT: OKAY, I DON'T AGREE WITH
28 PART OF WHAT YOU SAID, AND I DO AGREE WITH PART OF

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1 WHAT YOU SAID. I AGREE THAT HE CANNOT EXECUTE
2 AGAINST THE CREDIT LINE. IN SPITE OF THE
3. PROPOSITION THAT YOU ARE CITING HOOD FOR, I THINK.
4 THE APPELLATE COURT COULD DECIDE THAT YOU CANNOT
5 PURSUE YOUR APPEAL IF I ORDERED MONEY FOR HER TO
6 DEFEND THE APPEAL, AND YOU HAD NOT PAID IT.
7 MR. ZAMOS: I DON'T THINK SO. I THINK
8 THAT'S EXACTLY WHAT –
9 THE COURT: BUT THAT'S FOR THE APPELLATE
10 COURT
11 MR. ZAMOS: THAT'S EXACTLY WHAT THEY SAID
12 THEY CAN'T DO.
13 THE COURT: WE DISAGREE WITH THAT.
14 THAT'S NOT MY DECISION. THAT'S THE APPELLATE
15 COURT'S DECISION AS TO WHETHER THEY WOULD ALLOW YOU
16 TO GO AHEAD WITH AN APPEAL WHEN YOU HAD BEEN

ORDERED TO PAY MONEY FOR THE OTHER SIDE TO DEFEND
AND HAD NOT COMPLIED WITH THE COURT ORDER. WE
CERTAINLY HAVE SEEN ORDERS OF THAT TYPE AND HOOD
COMES UP IN A DIFFERENT CONTEXT AS I RECALL IT,
WAS A SPECIAL MASTER-TYPE –
MR. ZAMOS: THAT'S CORRECT.
THE COURT: - - ORDER. IT ISN'T AN
APPELLATE-TYPE FEE ORDER. IT WASN'T A FAMILY
LAW CONTEXT. IT DIDN'T INVOLVE A FEE UNDER
FAMILY CODE SECTION 3557 OR 2030, AND IT'S
DISTINGUISHABLE ON A NUMBER OF GROUNDS, BUT I AM
NOT - - I UNDERSTAND THAT OVERALL PHILOSOPHY THAT

PAGE 22.

YOU ARE MAKING HERE. AND IN GENERAL TERMS I AGREE
WITH YOU. WHEN WE ISSUE A MONEY JUDGMENT, THE
NORMAL WAY OF COLLECTING IT IS TO HAVE A WRIT OF
EXECUTION ISSUE, AND THEN LEVY ON SOMETHING THAT
YOU OWN. THAT WOULD BE THE TYPICAL WAY OF
COLLECTING A MONEY JUDGMENT.
I THINK IT REMAINS TO BE SEEN

WHETHER THE
APPELLATE COURT WOULD PREVENT YOU FROM PURSUING
YOUR APPEAL IF I MADE AN ORDER TO THE OTHER SIDE
TO - - OR FEES TO ORDER TO DEPEND AGAINST IT, BUT
THAT ISN'T WHAT WE ARE HERE TODAY TO DECIDE
MR. ZAMOS: MY POSITION IS AND I HAVE
THE RECORD THE UNCHALLENGED RECORD IN THIS CASE.
MY DECLARATION FILED - - MY DECLARATION FILED
OCTOBER 20 WITH THE COURT.
THE COURT: I HAVE READ THE 26-PAGE
DECLARATION THAT YOU FILED.
MR. ZAMOS: AND A PORTION THAT IS NOT –
THE PORTION THAT IS NOT OBJECTED TO I HAVE
SPECIFICALLY STATED, AND THERE IS NO EVIDENCE TO
THE CONTRARY THAT I DO NOT HAVE FUNDS AVAILABLE TO
ME TO ADVANCE FOR MY OWN ATTORNEY WITHOUT DRAWING
ON CREDIT CARDS.

PAGE 59:

I DO NOT WANT TO BE MISUNDERSTOOD, AND
THAT IS THAT I BELIEVE THE PETITIONER HAS A

3 REASONABLE CHANCE OF SUCCESS ON SOME OF THE ISSUES
4 IN THIS CASE. I THINK THERE ARE INTERESTING AND
5 SOMEWHAT NOVEL ISSUES HERE SO I AM NOT SAYING THAT
6 THIS IS A FRIVOLOUS APPEAL OR ONE THAT IS FILED FOR
7 THE SOLE PURPOSE OF AGGRAVATING THE RESPONDENT.
8 THAT ISN'T THE BASIS AT ALL FOR THIS APPEAL OR FOR
9 MY ORDER.

APPENDIX "L"
SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO

Filed
Dec 19, 2000

In re the Marriage of:)Case No.: D 270609
Petitioner: JEROME ZAMOS)
and)
Respondent: PATRICIA ZAMOS)

FINDINGS AND ORDER AFTER HEARING

x As Attached

Dated: DEC 19, 2000

THOMAS ASHWORTH III

ATTACHMENT TO FINDINGS AND ORDER AFTER HEARING

This matter previously came on for hearing on October 31, 2000 in Department W2 before the Honorable Edward B. Huntington, Judge Presiding on Petitioner's Order To Show Cause Re Modification/Termination of Spousal Support filed on June 20, 2000. At said hearing, Petitioner terminated his counsel Michael Shea and the matter was thereafter continued to December 7, 2000 at 1:45 pm as more particularly set out in the Findings Arid Order After Hearing filed November 3, 2000. petitioner, having filed a Statement of Doubt of Judicial Officer's Impartiality And Objection To Further Proceedings Before The Honorable Edward B. Huntington Based Upon His Apparent Lack Of Impartiality under Code Procedure §§ 170.1 and 170.2, the Honorable Edward B. Huntington having recused himself and the matter having been transferred thereafter to Department F3, the Honorable Thomas Ashworth. Judge

Presiding, as more particularly set out in the Minute Order dated November 15, 2000.

This matter now having come on regularly for hearing on December 7,2000, the court having received into evidence Petitioner's and Respondent's pleadings and relying only upon admissible evidence, and declined to make specific evidentiary rulings, having read and considered the pleadings and records of this proceeding as well as Petitioner's Writs of Mandate and/or other appellate motions including Appendices,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Petitioner's Order to Show Cause Re: Modification for Spousal Support is granted and Petitioner's obligation to pay spousal support is reduced to $0 per month retroactive to August 1, 5 2000, with a retention of jurisdiction. The court denies Petitioner's motion to terminate spousal support jurisdiction.

2. Said order modifying spousal support *is* based upon the following findings and analysis under Family Code §4320 independent of Petitioner's non-compliance with Judge Huntington's discovery order on October 31, 2000: Respondent is currently employed at a level to meet her needs based upon the marital standard of living; this was a long term marriage and the spousal support order for support including the support Petitioner should have paid approached the length of the marriage; both parties are about age 63; Respondent *has* a Masters degree; Petitioner has a Masters of Business Administration and a June Doctorate degree; Respondent's health is good; Petitioner's health is questionable-he lacks energy but HAS NOT PREVENTED HIM FROM CONTINUING TO WORK; Respondent's gross income is approximately $65,000 per year (somewhere between $60,000

and $70,000); Petitioner's income is at least as great as Respondent's income although it does vary, and his expenses are covered in part by contributions from his wife.

3. Respondent's request for attorney fees for opposing Petitioner's Order To Show Cause Re: Modification/Termination of Spousal Support and other services is deferred and denied without prejudice until after conclusion of Petitioner's pending appeals. The court specifically finds that a future negative change of Petitioner's economic circumstances shall not be considered in any award of attorney fees to Respondent post-appeal RELATED TO THIS REQUEST.

APPROVED AS CONFORMING TO THE COURT'S ORDER.

Not Approved

Jerome Zamos, Petitioner In Pro Per

APPENDIX "M"

James R. Spievak (SBN 54609)
Annis & Spievak
600 B Street, Suite 2120
San Diego, CA 92101
(619) 236-1820
(619) 236-1536 FAX

IN THE COURT OF APPEAL FOR THE STATE OF CALIFORNIA,
FOURTH APPELLATE DISTRICT
DIVISION ONE

In re the Marriage of:	**) Appeal No.: D 036239**
Petitioner: JEROME ZAMOS	**) SDSC Case No D 270609**
and	**) Filed**
Respondent: PATRICIA ZAMOS	**) Dec 20, 2000**

APPEAL FROM THE SUPERIOR COURT OF
SAN DIEGO COUNTY
HONORABLE EDWARD HUNTINGTON
JUDGE PRESIDING

MOTION FOR STAY, APPLICATION TO EXTEND TIME TO FILE RESPONDENT'S BRIEF, DECLARATION OF JAMES R. SPIEVAK AND MEMORANDUM OF POINTS AND AUTHORITIES

PATRICIA KAY ZAMOS, ("Patricia") Respondent on appeal, moves this Court for an order staying the appeal in this action pending Appellant's payment for Respondent's fees and costs on appeal as ordered by the trial court. This motion is made on the following grounds:

1. Appellant has not paid anything toward Respondent's fees to enable her to defend against this appeal as ordered by

the trial court orally on December 7, 2000 and embodied in the Findings And Order After Hearing filed December 14, 2000.

2. California case law establishes a judgment of contempt need not be rendered in order to hold Appellant in contempt for purposes of staying and/or dismissing his appeal.
This motion is based upon this motion, the attached declaration of James R. Spievak, and the attached Memorandum of Points and Authorities.

DECLARATION OF JAMES R. SPIEVAK IN SUPPORT OF MOTION TO STAY APPEAL AND APPLICATION FOR TIME TO FILE RESPONDENT'S BRIEF

I, James R. Spievak, declare:

1. I am the trial attorney for PATRICIA KAY ZAMOS, (Patricia) in San Diego Superior Court Case 0270609. The underlying action was for adjudication and collection of past due spousal support, child support for college education and equalization payment arrears. After lengthy proceedings, the trial court entered a Judgment After Hearing filed 6/27/00, which found that Appellant was in arrears of spousal support in the amount of $66,500, child support for college expenses of $3,919, and equalization payments of $60,829. The Court further ordered Appellant to pay $12,184 toward Respondent's attorney fees and costs.

2. Appellant has openly refused to comply with any portion of this Judgment. Dissatisfied with the ruling adjudicating support arrears, Jerome Zamos ("Jerome") , a very experienced and accomplished Los Angeles attorney at law, immediately filed a slew of motions, appeals and writs to modify and/or change the results. (See Petitions

filed with this court in Case numbers 0036392 and 0036781, Appellant's Opening Brief in this case, and a motion to modify support in the Superior Court.) Unfortunately, while Jerome can represent himself in this multitude of proceedings, Patricia cannot afford to keep up with attorney Jerome's legal filings. As a result, she requested that the Superior Court award her attorney fees to defend the appeal.

3. I am not an appellate attorney and I sought to refer my client, Patricia Zamos to an appellate specialist. I contacted attorney Stephen Temko, who is an expert in family law and appellate matters. Mr. Temko stated he would need a retainer in order for him to represent Patricia in the appellate court. Based on the need for a retainer, I sought fees from Jerome in the Superior Court.

4. On October 13, 2000, based upon the needs of my client and a declaration of attorney Temko, I made application to the Superior Court for attorney's fees on the appeal only in the amount of $10,000. In the meantime, Jerome filed his Motion to Set Aside Judgment Pursuant to The Provisions of Code of Civil Proceedings 914 and/or Petition for Writ of Error CORAM VOBIS and Appellant's Opening Brief. Respondent's Brief was first due on November 8, 2000.

5. The motion for attorney fees was delayed in being heard. At the first hearing of October 31, 2000, Jerome failed to file a complete Income and Expense Declaration . Judge Edward B. Huntington continued the matter and ordered Jerome to produce certain specific documents relating to contributions to a Defined Benefit Pension Plan and his tax returns. Thereafter, Jerome challenged Judge Huntington for cause and filed a civil action against Patricia in the United States District Court for the Central District of California, Case Number 00-12269 LGB

(RZX) entitled JEROME ZAMOS, INDIVIDUALLY AND AS CO-TRUSTEE OF THE JEROME ZAMOS RETIREMENT TRUST U/D/T DECEMBER 31, 1997 AND THE JEROME ZAMOS DEFINED BENEFIT PENSION PLAN V. PATRICIA KAY ZAMOS. Judge Huntington recused himself by minute order of November 15, 2000. Jerome also filed a petition to this Court for Writ of Mandate, Case Number 0036781. The OSC for fees on appeal was finally heard before Judge Thomas Ashworth on December 7, 2000.

6. After considering the needs and abilities of the parties to pay, on December 7, 2000, Judge Ashworth, irk open court, ordered Appellant to pay $7,500 forthwith as a contribution to Respondent's attorney fees on appeal. The Court further ordered that said order was made without prejudice. Judge Ashworth, after review of the pleadings filed and after hearing the argument of counsel noted that the original fee application was reasonable, the $7,500 fee order was inadequate but further augmentation would be deferred until merits of the appeal had been determined. The order, filed December 14, 2000 is attached hereto as Exhibit A.

7. No payments have been received. Jerome has stated to me he will not pay the court-ordered fees.

8. Jerome has paid over $13,000 to his trial court attorney, Michael Shea, who he terminated in open court on October 31, 2000. He openly stated he has no assets subject to execution. However, he admitted on the record he was taking a trip to Nigeria for a former client's wedding.

9. Jerome filed his Opening Brief and Patricia is without the financial resources to defend against the appeal. This is the exact problem the Superior Court sought to avoid by ordering Jerome to pay fees.

10. Respondent's motion to stay the appeal pending Appellant's payment of attorney fees is made on the grounds that Appellant has not paid these trial court—ordered fees and costs.

11. As set forth in Respondent's Memorandum of Points and Authorities filed in conjunction with this motion, California case law allows the stay and/or dismissal of an appeal when Appellant has not complied with another Court's order.

12. Respondent requests this Court to stay the appeal. The appeal should be stayed until Jerome complies with the Superior Court order and pays $7,500 as ordered.

13. If the court does not establish some reasonable procedure to guarantee payment, Respondent's rights will not be protected. All the court will be doing by granting this request is to insure that Appellant complies with an order already made. Considering the potential hardship to Respondent this does not seem unreasonable.

14. Respondent's brief is now due January 8, 2000. Under the circumstances, Respondent has not retained appellate counsel. Given Appellant's response time to this motion and time for the court to rule, Respondent also asks that the time to file her Respondent's Brief be extended to at least February 8, 2000.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed December 20 , 2000 in San Diego, California.

APPENDIX "N"

4 Civ. D036239

Filed
Jan 8, 2001

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
IN AND FOR THE FOURTH APPELLATE DISTRICT
DIVISION ONE

In Re the Marriage of:	)
JEROME ZAMOS,	)
PETITIONER/APPELLANT,	)
and	)
PATRICIA KAY ZAMOS,	)
APPELLEE/RESPONDENT.	)
	)

APPELLANT'S OPPOSITION TO RESPONDENT'S REQUEST FOR STAY

COMES NOW APPELLANT/PETITIONER JEROME ZAMOS [hereinafter "APPELLANT"] objects to this Court granting any stay of these proceedings based upon his failure to advance fees for the benefit of RESPONDENT or to make any monetary payments under the terms of any order entered by the trial court in proceeding D036239 on the grounds that any such stay would violate APPELLANT'S right to due process and equal protection under both the Fourteenth Amendment to the Constitution of the United States of America and Article I § 7 of the Constitution of the State of California and his statutory right to an appeal in this case under Code of Civil Procedure §§ 902 and 904.1.

In support of the objections set forth above APPELLANT alleges as follows:

1. APPELLANT has duly perfected the pending appeal in accordance with the provisions of both Code of Civil Procedure § 904.1 and the California Rules of Court and intends to file an additional appeal from the order entered in the trial court on December 14, 2000.

2. I have elected to proceed in pro per in this matter because I do not have sufficient funds to continue to pay for independent counsel.

3. I do not have sufficient funds to comply with the trial court's order directing me to advance funds to RESPONDENT'S counsel for her benefit without drawing upon lines of credit using high interest rate credit cards, which I am unwilling to do.

4. I have recently been diagnosed with colon cancer and am scheduled to have a hemicolectomy on January 11, 2001 which will require me to be hospitalized for a minimum of five (5) days following surgery. I will be unable to resume my full time practice for a minimum of four (4) to six (6) weeks following surgery.

5. My impending surgery, and its anticipated impact on my law practice has made it even more difficult for me to advance any funds to pay for RESPONDENT'S counsel.

6. During the course of the proceedings in which the court ordered me to advance funds to RESPONDENT'S counsel evidence was produced that she has accessible investment accounts with sufficient assets to fund the cost of counsel in this proceeding.

7. In March of 2000 a client requested me to attend his wedding in Nigeria. The wedding was in fact scheduled to coincide with my current wife's teaching schedule and the airline tickets to attend the wedding were purchased by the client in September of 2000. The wedding was in fact held in Owerri, Imo State, Nigeria on December 30, 2000.

8. Our food, housing accommodations while in Nigeria and wedding attire were all paid for by either my client or his family.

9. RESPONDENT and her counsel were both aware of the fact that I would be out of the country attending a wedding in Nigeria from December 18, 2000 through January 4, 2001 at my client's expense because that fact was disclosed both in declarations filed with the trial court and in argument made during the course of proceedings in open court in this litigation.

10. The fact that I would be out of the country was also communicated to RESPONDENT'S counsel by telefax on December 14, 2000 as evidenced by the FAX MEMO communicated to him on that date in the form of Exhibit "1" attached hereto.

11. Although I had anticipated being in regular contact with my office during my stay in Nigeria, because of the lack of adequate telephone and e-mail facilities in the Imo State of Nigeria during the course of my stay I was unable to do so.

12. I only became aware of the actual filing of a request for a stay in this proceeding upon my return to the United States on the afternoon of January 4, 2001 [after over twenty-four (24) hours in transit from Nigeria] when I reviewed the mail that arrived during my absence and checked the court's E-Mail site late on the afternoon of January 4, 2001.

13. This objection is being filed at the earliest possible moment which is available to me as a result of my recent travels out of the country.

I declare under penalty of perjury under the laws of the State of CALIFORNIA that the foregoing is true and correct.

Executed on January 5, 2001 at WOODLAND HILLS, CALIFORNIA.

_____

JEROME ZAMOS

MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO RESPONDENT'S REQUEST FOR A STAY

The stay requested by RESPONDENT in connection with the pending appeal is based solely upon APPELLANT'S failure to advance funds to finance her counsel's fees. The imposition of such a condition precedent on PETITIONER'S right to present his arguments to this court is beyond the scope of this court's jurisdiction under Code of Civil Procedure § 901 [which vests exclusive authority for imposing conditions upon a party's appellate rights on "The Judicial Council"] and would violate PETITIONER'S due process and equal protection rights under both Article I § 7 of the Constitution of the State of California and the Fourteenth Amendment to the Constitution of the United States of America.

See: Newland vs. Superior Court 40 Cal.App.4th 608 (1995)

LAW OFFICES OF JEROME ZAMOS
by:_____
JEROME ZAMOS, Attorney at Law
APPELLANT/PETITIONER, IN PRO PER

APPENDIX "0"

COURT OF APPEAL
FOURTH APPELLATE DISTRICT
DIVISION ONE
STATE OF CALIFORNIA

Filed
JAN 8 12001

In re the Marriage of JEROME and
PATRICIA K. ZAMOS.

JEROME ZAMOS,
Appellant,
V.
PATRICIA K. ZAMOS,
Respondent.

D036239
San Diego County 0270609

THE COURT:

Appellate proceedings are stay 30 days. On or before February 7, 2001, appellant is directed to provide the court with proof of payment of $ 7,500, to respondent for attorney fees or with a showing of why the appeal should not be dismissed.

_____
Presiding Justice

APPENDIX "P"

4 Civ. D036239

Filed
Jan 8, 2001
Court of Appeal Fourth District

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
IN AND FOR THE FOURTH APPELLATE DISTRICT
DIVISION ONE

In Re the Marriage of:	)
JEROME ZAMOS,	)
PETITIONER/APPELLANT,	)
and	)
PATRICIA KAY ZAMOS,	)
APPELLEE/RESPONDENT.	)
	)

APPELLANT'S RESPONSE TO ORDER TO SHOW CAUSE; REQUEST FOR ORAL ARGUMENTS AND WRITTEN OPINION PURSUANT TO ARTICLE VI § 14 OF THE CONSTITUTION OF THE STATE OF CALIFORNIA AND RULE 21(a) OF THE CALIFORNIA RULES OF COURT AND REQUEST TO VACATE STAY AND REINSTATE BRIEFING SCHEDULE ON PENDING APPEAL PURSUANT TO CODE OF CIVIL PROCEDURE § 473

APPELLANT'S RESPONSE TO THE ORDER TO SHOW CAUSE ENTERED ON JANUARY 8, 2001

COMES NOW APPELLANT/PETITIONER JEROME ZAMOS [hereinafter referred to as "APPELLANT"] and

responds and objects to the ORDER TO SHOW CAUSE issue by this Court on January 8, 2001 and requests that:

(a) The Court vacate and rescind the stay entered on January 8, 2001 pursuant to Code of Civil Procedure § 473 because the order was entered as a result of an application filed by RESPONDENT on December 20, 2000 during a period of time when both RESPONDENT and her counsel were aware that APPELLANT was out of the country and would be unable to file a response within the time allotted under the Court's rules and failed to disclose that fact to the court in their moving papers;

(b) This Court allow this appeal to continue without reference to the status of any trial court orders involving the payment of monetary awards to either party; and

(c) The briefing schedule be reinstated on this appeal in order to allow it to proceed to the ultimate scheduling of oral arguments pursuant to the provisions of Rule 21(a) of the California Rules of Court and the issuance of a formal decision on the merits in accordance with the mandatory provisions of Article VI § 14 of the Constitution of the State of California .

APPELLANT further objects to this Court:

(a) Making any substantive decisions or rulings which materially affect APPELLANT'S right to a decision on the merits on each of the issues raised in his opening brief filed herein on October 10, 2000 [hereinafter referred to as "APPELLANT'S OPENING BRIEF"] without complying with the provisions of Article VI § 14 of the Constitution of the State California and affording APPELLANT the opportunity to orally argue each of

the points raised in said brief through oral arguments scheduled in accordance with Rule 21(a) of the California Rules of Court;

(b) Imposing any monetary conditions upon APPELLANT'S rights under Code of Civil Procedure § 904 to pursue the issues raised herein in excess of those expressly authorized by the Legislature under the provisions of Government Code § 68926 and the California Judicial Council under Rule 1(c) of the California Rules of Court;

(c) Taking any action which is not provided for in Title 9 of the California Code of Civil Procedure (Code of Civil Procedure §§ 695.010 et seq. hereinafter referred to as "THE ENFORCEMENT OF JUDGMENT LAW"] to assist any party to this appeal to enforce any order providing for the payment of money ;

(d) Taking any action to enforce any order or judgment entered in the trial court in the action from which this appeal is taken which involves the payment of money other than through use of enforcement proceedings unless such procedures have been authorized by the legislature through the enactment of THE ENFORCEMENT OF JUDGMENT LAW.

(e) Entering any order which either directly or indirectly would require APPELLANT or any other party to this appeal to liquidate any property subject to the provisions of Code of Civil Procedure § 695.040 as a condition precedent to having this appeal decided on its merits;

(f) Making or enforcing any order that either directly or indirectly deprives APPELLANT of the benefits of Code of Civil Procedure § 703.010 in connection with the enforcement of any monetary claim which RESPONDENT may have against him as a result of any order entered in the trial court in the action from which

this appeal is taken; or

(g) Entering any order which attempts to enforce any monetary claim which RESPONDENT may have against him as a result of any judgment or order entered in the trial court in the action from which this appeal is taken on or after April 30, 1992 ;

In response to the ORDER TO SHOW CAUSE issued herein on January 8, 2001 and his request for the relief set forth above APPELLANT alleges as follows:

1. The action [hereinafter referred to as "THE 1980 DISSOLUTION PROCEEDING"] in which the order appealed from herein was entered was initiated by PETITIONER on July 2, 1980 [see APP.APX. Tab "1" at page D00001].

2. In her Response filed in THE 1980 DISSOLUTION PROCEEDING RESPONDENT PATRICIA KAY ZAMOS [hereinafter referred to as "RESPONDENT"] on July 1, 1981 acknowledged that the parties to this appeal had not lived together as husband and wife since at least April 15, 1981 [see APP.APX. Tab "2" at page D00005].

3. On April 27, 1982 an interlocutory decree of dissolution [hereinafter "THE 1982 DECREE"] was entered in THE 1980 DISSOLUTION PROCEEDINGS under which all of RESPONDENT'S rights in APPELLANT'S property were terminated [see APP.APX. Tab "4" at pages D00012 through D00035 inclusive].

4. Under the provisions of THE 1982 DECREE [subject to certain penalty provisions which APPELLANT asserts are unenforceable by virtue of the provisions of Civil Code § 3369] APPELLANT'S obligation to make spousal support payments to

RESPONDENT were to terminate on April 30, 1992 [see APP.APX. Tab "4" at page D00015].

5. There are no provisions in THE 1982 DECREE which provide for any continuing jurisdiction by either the court in which it was entered or any other court to exercise jurisdiction to enforce its provisions from and after April 30, 1992 in the absence of a finding that APPELLANT was in default under its terms prior to that date.

6. Prior to June 27, 2001 no order has ever been entered in any proceeding held in any Court which:

> (a) Conformed with the due process requirements of Article I § 7 of the Constitution of the State of California and the Fourteenth Amendment to the Constitution of the United States of America; and
>
> (b) Found that APPELLANT was in default under the provisions of THE 1982 DECREE.

7. APPELLANT has since April 30, 1992 openly asserted his claim that he had no further legal obligation to provide any form of support to either RESPONDENT or the children of his marriage to her [all of whom had reached the age of majority by April 20, 1989] from and after April 30, 1992 [subject to certain penalty provisions which APPELLANT asserts are unenforceable by virtue of the provisions of Civil Code § 3369] .

8. Under the express terms of THE 1982 DECREE APPELLANT'S obligation to make spousal support payments to RESPONDENT were to terminate on April 30, 1992 and there

was nothing in that decree which conferred continuing jurisdiction over the parties in the absence of a new order entered on or before that date [see APP.APX. Tab it "4" at pages D00015].

9. At all times since the entry of THE 1982 DECREE APPELLANT'S whereabouts have been either known to RESPONDENT or readily ascertainable through reference to public records, including records maintained by the State Bar of California.

10. APPELLANT has duly perfected the pending appeal in accordance with the provisions of both Code of Civil Procedure § 904.1 and the California Rules of Court and paid all fees required under both Government Code § 68926 and Rule 1(c) of the California Rules of Court.

11. APPELLANT [who is a member of the California State Bar in good standing] has elected to represent himself in connection with all matters related to all of his appeals in this case because of his inability to retain independent counsel without the forced liquidation of his retirement accounts which are exempt from execution under both federal and state law or the use of high interest credit cards.

12. APPELLANT has also filed a PETITION and Motion on September 25, 2000 [4 Civ. D 036392 which is hereinafter referred to as "APPELLANT'S MOTION UNDER CODE OF CIVIL PROCEDURE § 914"] in which he requested that all orders entered in the trial court based upon any hearing which occurred in 1989 which did not result in the entry of an appealable order be vacated and set aside under the provisions of Code of Civil procedure § 914 because of the destruction of all reporter's notes in connection with such hearings.

13. Notwithstanding the passage of over ninety (90) days since the filing of APPELLANT'S MOTION UNDER CODE OF CIVIL PROCEDURE § 914, the lack of any response to said motion by RESPONDENT within the time prescribed in Rule 41(a) of the California Rules of Court and APPELLANT'S request for the entry of a default order on January 24, 2001, this Court has failed to take any action, or render any decision in said matter as required by law [see SUPP.APX. Tab 22 page B 248].

14. On October 10, 2000 APPELLANT filed his opening brief [hereinafter referred to as "APPELLANT'S OPENING BRIEF"] which sets forth the legal basis upon which he has sought relief from this Court [see SUPP.APX. Tab 21 page B 246] with the clerk of this court in full conformity with the requirements of the California Rules of Court and all other applicable laws.

15. APPELLANT desires, and is entitled to a full determination on the merits by this Court of each of the legal issues raised in APPELLANT'S OPENING BRIEF following oral arguments held in accordance with Rule 21(a) of the California Rules of Court and the issuance of a written decision which conforms with ARTICLE VI § 14 of the Constitution of the State of California.

16. APPELLANT has not, and does not intend to waive his right to oral arguments under Rule 21(a) of the California Rules of Court in connection with the issues set forth in APPELLANT'S OPENING BRIEF and has not and does not intend to waive his right to the issuance of a written decision which conforms with Article VI § 14 of the Constitution of the State of California in connection with this appeal.

17. APPELLANT objects to this court's entry of any order that conditions his right to pursue his appeal herein on the payment of any sum of money to anyone in excess of the fees specifically prescribed by the Legislature under the provisions of Government Code § 68926 and the California Judicial Council under Rule 1(c) of the California Rules of Court on the grounds that this Court lacks the jurisdiction to impose such a condition without affording APPELLANT his procedural rights under THE ENFORCEMENT OF JUDGMENT LAWS.

18 On December 14, 2000 the Superior Court in the matter from which this appeal is taken issued an order [a copy of which is filed herein as SUPP.APX. Tab "12" at pages B 200 through B 203 inclusive and hereinafter referred as "THE ATTORNEY FEE ORDER"] requiring APPELLANT to advance the sum of $7,500.00 to RESPONDENT'S counsel as retainers for services to be rendered in connection with the appeal and appellate matters related to the order or judgment which is the subject matter of this appeal.

19. APPELLANT does not have non exempt funds available to advance either the sum of $7,500.00, or any other amount, to either RESPONDENT or her counsel as specified under the provisions of THE ATTORNEY FEE ORDER without liquidating assets which are exempt from execution under both state and federal law.

20. As a result of his lack of non-exempt assets to pay the $7,500.00 specified in THE ATTORNEY FEE ORDER APPELLANT has not made said payment and does not anticipate being in a position to make it if ordered by this court to do so at any time in the future.

21 In the event any attempt is made by RESPONDENT or anyone else to enforce the provisions of THE ATTORNEY FEE ORDER through execution under the provisions of THE ENFORCEMENT OF JUDGMENT LAWS APPELLANT intends to avail himself of the procedures contained in Article 2 of THE ENFORCEMENT OF JUDGMENT LAWS [Code of Civil Procedure §§ 703.510 et seq.] and appeal any adverse ruling to this court under the provisions of Code of Civil Procedure § 703.600.

22 Until an appeal is perfected under the provisions of Code of Civil Procedure § 703.600 from an order entered under the provisions of Article 2 of THE ENFORCEMENT OF JUDGMENT LAWS [Code of Civil Procedure §§ 703.510 et seq.] this court has no jurisdiction to enter any orders which either directly or indirectly attempt to force compliance or aid in the enforcement of THE ATTORNEY FEE ORDER.

23 As of this date no order has been entered under the provisions of Article 2 of THE ENFORCEMENT OF JUDGMENT LAWS which has determined any of APPELLANT'S claims of exemption in connection with the enforcement of any order entered in the trial court from which this appeal has been taken which requires APPELLANT to pay any sum of money to RESPONDENT or anyone else.

24 Based upon the exclusive jurisdiction of the Federal District Courts of the United States of America under section 502(e) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. § 1132(e)], on November 17, 2000 APPELLANT filed, thereafter served and there is currently pending in the United States District Court for the Central District of California an action [CV 00-12269 LGB(RZx) hereinafter referred to as "THE ERISA ACTION"] which seeks to obtain orders:

(a) Declaring APPELLANT'S rights to protect the assets in the trust established in connection with his defined benefit retirement plan [which was formed in accordance with the provisions of section 401(a) of the Internal Revenue Code (28 U.S.C. § 401(a)) and the Employee Retirement Income Security Act (29 U.S.C. § 1001 et seq.) are not subject execution or available to satisfy claims by RESPONDENT [who has admitted in a Certification filed therein that she has no interest in the defined benefit plan which is the subject matter of that action]; and

(b) Enjoining RESPONDENT from applying for the issuance of an order in a state court which attempts to force APPELLANT to use any of the assets in the trust created to fund his defined benefit plan either directly or indirectly for RESPONDENT'S benefit.

25 As a result of the filing and pendency of THE ERISA ACTION in the United States District Court for the Central District of California and that court's exclusive jurisdiction of under section 502(e) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. § 1132(e)], neither this Court, or any other state court has jurisdiction to determine the exempt status of APPELLANT'S defined benefit retirement plan, or take any action which interferes, or threatens to interfere with its administration under the laws of the United States of America.

26 APPELLANT is informed, and based upon such information believes that RESPONDENT has made no efforts to enforce the monetary provisions of THE ATTORNEY FEE ORDER under the procedures mandated under the provisions of THE ENFORCEMENT OF JUDGMENTS LAW and has

consented to the jurisdiction of the United States District Court for the Central District of California in THE ERISA ACTION [by filing an answer and making a general appearance in said action] to determine the exempt status of APPELLANT'S defined benefit retirement plan.

27. APPELLANT is informed, and based upon such information believes that RESPONDENT has made no efforts to enforce the monetary provisions of THE ATTORNEY FEE ORDER under the mandatory provisions of THE ENFORCEMENT OF JUDGMENTS LAW because she and her counsel are aware that APPELLANT has no assets which are executable against under the provisions of that law in the absence of the forced liquidation of retirement funds which are exempt from execution under both state and federal law.

28. THE ATTORNEY FEE ORDER is appealable to this Court under the provisions of Code of Civil Procedure § 904.1(2) because it was entered after the judgment from which the appeal herein was entered.

29. On January 9, 2001 APPELLANT perfected an appeal from THE ATTORNEY FEE ORDER by filing a timely notice of appeal in accordance with Rule 2(a) of the California Rules of Court [SUPP.APX. Tab 16 at pages B 219 through B 222 inclusive] and payment of all fees prescribed by the Legislature under the provisions of Government Code § 68926 and the California Judicial Council under Rule 1(c) of the California Rules of Court on the grounds that it lacks the jurisdiction to impose such a condition [see SUPP.APX. Tab 23 page B 249].

30. As a result of APPELLANT'S perfection of an appeal from THE ATTORNEY FEE ORDER this court cannot

make any order or ruling which is dependant upon the validity of THE ATTORNEY FEE ORDER without allowing all parties the opportunity to fully brief their arguments in accordance with Rule 16 of the California Rules of Court, scheduling oral arguments in accordance with the provisions of Rule 21(a) of the California Rules of Court and issuing a formal written decision which complies with the mandatory provisions of Article VI § 14 of the Constitution of the State of California.

31 By virtue of the due process and equal protection provisions of both Article I § 7 of the Constitution of the State of California and the Fourteenth Amendment to the Constitution of the United States of America neither this court or any other court has jurisdiction to either:

> (a) Stay any judicial proceedings initiated by any citizen or resident of the State of California or any other state based solely upon the non payment of a judicial order requiring the payment of money; or
> (b) Terminate any judicial proceeding initiated in full accordance with the laws of any state based solely upon a litigant's failure to advance funds for the benefit of his adversary or to facilitate his adversaries' participation in the proceeding.

32 On November 21, 2000 APPELLANT was diagnosed with colon cancer [see SUPP.APX. Tab 3 pages B 59] and thereafter underwent a hemicolectomy on January 11, 2001. That surgical procedure [which involved the removal of APPELLANT'S entire ascending colon and portions of other sections of his colon and part of his intestines as set forth in the surgical report filed herein at SUPP.APX. Tab 19 pages B 242

through B 243 inclusive] reconfirmed that APPELLANT had a malignant mass which had penetrated deeply into the wall of his ascending colon [as set forth in the Surgical Pathology Report filed herein at SUPP.APX. Tab 20 at pages B 244 through 245 inclusive].

33. As a result of the findings obtained during the course of APPELLANT'S recent surgery he has scheduled consultations with oncologists at the UCLA Cancer Center in Los Angeles and may be required to undergo additional treatments, including some form of chemotherapy and participation in clinical trials involving experimental procedures which have not been approved for use by the general public.

34 It is anticipated that as a result of the health issues referred to above APPELLANT'S ability to generate fees in the near term will be adversely affected.

35 As set forth in the declarations initially filed by RESPONDENT in support of the attorney fee motion filed in the trial court on October 13, 2000 [hereinafter referred to as "RESPONDENT'S ATTORNEY FEE MOTION"] her primary justification for seeking an order directing APPELLANT to pay her attorney fees was based upon her false assumption that APPELLANT had sufficient funds to retain the services of an experienced APPELLATE LAWYER and her unsubstantiated claim that she had no available funds to use for that purpose [see WRIT APX. Exhibit "E" at page C 032 lines 19 through 21 inclusive] and ¶ 6 of the Declaration of STEPHEN TEMKO at page C036 lines 5 through 18 inclusive].

36 Copies of all of the documents filed prior to the initial October 31, 2000 hearing date on RESPONDENT'S ATTORNEY FEE MOTION have previously been filed as

Exhibits"D", "E", "F", "G", and "H" [see WRIT APX. Exhibits "D", "E", "F", "G", and "H" at pages C 021 through C 108 inclusive] in connection the petition for writ of mandate filed by APPELLANT with the clerk of this court on November 16, 2000 [4 Civ. D036781] and pursuant to the provisions of Rule 11(b) of the California Rules of Court APPELLANT designates those exhibits as part of the record in support of his response to the Order to Show Cause issued herein on January 8, 2000.

37 Contrary to the claim made by RESPONDENT in her initial declaration filed in support of RESPONDENT'S ATTORNEY MOTION:

> (a)APPELLANT did not, and does not have the financial resources to retain the services of independent counsel [see WRIT APX. Exhibit "F" ¶¶ 42 through 49 inclusive at page C 069 line 22 through C 072 line 10 inclusive and SUPP.APX. Tab 3 ¶ 14 at page B 45 line 27 through page B 46 line 5 inclusive];
> (b) APPELLANT has been diagnosed with colon cancer and underwent major surgery for the removal of a malignant mass in his ascending colon on January 11, 2001 [see APP.APX. Tab 19 at pages B 242 and B 243]

38 By contrast, as set forth in Exhibit "B" attached to RESPONDENT'S Reply declaration filed with the trial court prior to the December 7, 2000 hearing on RESPONDENT'S ATTORNEY FEE MOTION [see SUPP.APX. Tab 4 at page B 80 through B 83 inclusive] RESPONDENT [who the trial court acknowledged had an income in a range between $ 60,000.00 and $ 70,000 a year (APP.APX. Tab 19 at pages B 172 line 23 through page B 173 line 3 inclusive) and was in good health (see

APP.APX. Tab 11 at page 178 line 27 through B 179 line 4 inclusive)] has a minimum of $ 50,000.00 in liquid assets available to pay counsel [see SUPP.APX. Tab 11 at page B 140 line 24 through page B 142 line 7 inclusive] which she is unwilling use for that purpose because of her desire to have APPELLANT pay their fees generated in connection with all proceedirgs flowing out of her March 23, 2000 filing of her request to enter the 1989 order which is the subject matter of APPELLANT'S MOTION UNDER CODE OF CIVIL PROCEDURE § 914 [which has been pending for over ninety (90) days] .

39 In making THE ATTORNEY FEE ORDER the trial court abused its discretion because it ignored APPELLANT'S lack of funds and based his decision to award fees not on RESPONDENT'S needs, but on the fact that she "was defending the appeal" and was "not the one that is prosecuting the appeal" [see APP.APX. page B 176 lines 26 through 28 inclusive] despite the Court's belief that APPELLANT "has a reasonable chance of success in this case" [see APP.APX. page B 177 lines through 4 inclusive].

WHEREFORE APPELLANT prays that this court:

1. Vacate the stay and order to show cause issued and entered herein on January 8, 2001 and direct the parties to proceed with briefing in the manner prescribed under Rules 16 and 17 of the California Rules of Court;

2. Upon the submission of APPELLANT'S REPLY brief or the expiration the time for its filing under Rule 16 of the California Rules of Court the matter be set for argument in accordance with the provisions of Rule 21(a) of the California

Rules of Court and that following oral arguments the Court render a final decision in accordance with Article VI § 14 of the Constitution of the State of California.

3. For such other and further relief as the Court deems just and proper.

LAW OFFICES OF JEROME ZAMOS
By:_____
JEROME ZAMOS,
APPELLANT IN PRO PER

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I have read the foregoing APPELLANT'S RESPONSE TO ORDER TO SHOW CAUSE; REQUEST FOR ORAL ARGUMENTS AND WRITTEN OPINION PURSUANT TO ARTICLE VI § 14 OF THE CONSTITUTION OF THE STATE OF CALIFORNIA AND RULE 21(a) OF THE CALIFORNIA RULES OF COURT AND REQUEST TO VACATE STAY AND REINSTATE BRIEFING SCHEDULE ON PENDING APPEAL PURSUANT TO CODE OF CIVIL PROCEDURE § 473 and know its contents. I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of CALIFORNIA that the foregoing is true and correct.

Executed on February 3, 2001 at WOODLAND HILLS, CALIFORNIA.

_____

JEROME ZAMOS

APPENDIX "Q"

Filed

Mar 26, 2001

California Supreme Court

Civ. D036239

RELATED TO 4 Civ. D036392

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

In Re the Marriage of:	)
JEROME ZAMOS,	)
PETITIONER/APPELLANT,	)
and	)
PATRICIA KAY ZAMOS,	)
APPELLEE/RESPONDENT.	)
_____	)

PETITION FOR REVIEW OR IN THE ALTERNATIVE REQUEST BY APPELLANT FOR AN ORDER REINSTATING THE APPEAL IN THIS CASE AND TRANSFERRING IT TO A DIFFERENT APPELLATE PANEL PURSUANT TO RULE 20(a) OF THE CALIFORNIA RULES OF COURT

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

COMES NOW PETITIONER/APPELLANT JEROME ZAMOS [hereinafter "APPELLANT"] and PETITIONS this Court for an order reviewing the order [Exhibit "1"] of the Court of Appeal for the Fourth Appellate District Division One [hereinafter 'THE COURT OF APPEAL"] entered on February 21, 2001 [following APPELLANT'S

response to an earlier order attached hereto as Exhibit "2"] which improperly dismissed his fully perfected appeal in this case [see Docket for 4 Civ. D036239 attached as Exhibit "3"] based solely upon his failure to advance the sum of $7,500.00 to RESPONDENT PATRICIA K. ZAMOS [hereinafter "RESPONDENT"] to cover her costs and attorney fees in connection with the appeal in 4 Civ. D036239 pursuant to an order of the Superior Court of the State of California for the County of San Diego [hereinafter "THE TRIAL COURT"] which is currently the subject matter of a fully perfected appeal (see docket for 4 Civ. D03799 attached as Exhibit "4")], or in the alternative to enter an order reinstating the appeal in this case and transferring all future appellate proceedings to a different appellate panel pursuant to Rule 20(a) of the California Rules of Court [for all further proceedings].

This PETITION is related to an earlier PETITION FOR REVIEW filed with this Court in response to THE COURT OF APPEAL'S summary denial of APPELLANT'S request for relief under Code of Civil Procedure § 914 on February 5, 2001 [see docket for action 4 Civ. D036392 attached as Exhibit "5"].

SIGNIFICANT ISSUES OF LAW RAISED BY PETITION

This PETITION FOR REVIEW raises the following important issues of law which are matters of first impression:

(a) Does a California Appellate Court have jurisdiction to dismiss an appeal which has been fully perfected in full compliance with all applicable statutes and rules of court adopted by the California Judicial Counsel without the consent [under Rule 19 of the California Rules of

Court] of an APPELLANT who has:

1) Paid all fees required under Government Code § 68926 and Rule 1(c) of the California Rules of Court;

2) Designated a record in accordance Rule 5 of the California Rules of Court and caused an appendix to be filed in a timely manner in accordance with Rules 5.1 and 10 of the California Rules of Court; and

3) Filed an opening brief in a timely manner in accordance with Rule 16 of the California Rules of Court ;

based solely upon the APPELLANT'S failure to satisfy a trial court's order directing him to pay money for the benefit of his adversary's counsel ?

(b) Does a reviewing court in California have the right to redefine the nature of its process in order to avoid hearing a cause which is pending before it and issuing a written decision which conforms with the mandatory provisions of Article VI § 14 of the Constitution of the State of California ?

(c) Do California appellate courts have jurisdiction to enforce money judgments entered in the state's trial courts without complying with the mandatory provisions of CALIFORNIA'S JUDGMENT ENFORCEMENT LAW [Code of Civil Procedure

§§ 680.010 through 724.260 inclusive] ?

(d) Did THE COURT OF APPEAL violate APPELLANT'S fourteenth amendment rights [under the Constitution of the United States of America] to equal protection of the laws of California by denying him the benefits of the exemptions contained in CALIFORNIA'S JUDGMENT ENFORCEMENT LAW [Code of Civil Procedure §§ 680.010 through 724.260 inclusive]?

(e) Does THE COURT OF APPEAL'S recharacterization of its January 8, 2001 order [Exhibit "2"] as *sua sponte* " motion" [rather than an "Order to Show Cause"] raise an issue as to the Court's "impartiality" under Code of Civil Procedure § 170.1(a)(6)(C) which justifies transferring all further appellate proceeding in this case pursuant to Rule 20(a) of the California Rules of Court?

In support of his PETITION FOR REVIEW APPELLANT alleges as follows:

1 The proceedings from which the current controversy is derived [hereinafter " THE DISSOLUTION PROCEEDINGS"] was commenced by APPELLANT in July of 198O in order to dissolve his marriage to RESPONDENT PATRICIA KAY ZAMOS [hereinafter referred to as "RESPONDENT"] [see APP.APX. Exhibit "1" at page D00001].

2 On April 26, 1982 an interlocutory decree dissolving the marriage between PETITIONER and RESPONDENT was entered in the Superior Court of the State of California for the

County of Santa Barbara [see APP.APX. Exhibit "41" at pages D00035 inclusive].

3 On January 11, 1983 a Final Judgment dissolving the marriage between PETITIONER and RESPONDENT was entered in the Superior Court of the State of California for the County of Santa Barbara [see APP.APX. Exhibit "3" at pages D00008 through D00011 inclusive].

4 On August 25, 1989 a hearing was held before THE HONORABLE FEDERICO CASTRO on PETITIONER'S application to have his obligation to support REAL PARTY IN INTEREST modified and terminated as of January 5, 1989 [see letter dated May 19, 1989 from RESPONDENT'S counsel Walter Maund APP.APX. Exhibit "10" at page D00071].

5 At the conclusion of the August 25, 1989 hearing THE HONORABLE FEDERICO CASTRO made various rulings from the bench [which did not include any provision for continuing support beyond April 30, 1992] which APPELLANT believed were contrary to law, and which he intended to appeal upon entry of a final order signed JUDGE FEDERICO CASTRO [or any other bench officer assigned to do so by THE TRIAL COURT].

6 Despite the submission of a set of proposed orders and findings for execution by JUDGE FEDERICO CASTRO by both parties following the August 25, 1989 hearing, no appealable order has ever been entered on the application for modification filed by APPELLANT or any other matter considered by THE TRIAL COURT in case No. D 270609 during the course of the August 25, 1989 hearing .

7 In April of 1992, based upon his belief that he had satisfied all of his financial obligations to RESPONDENT under the terms of all orders entered in THE DISSOLUTION PROCEEDING prior to that date, APPELLANT made what he believed was his last payment to her and has made no further payments to her since.

8 At all times since he made his last payment to RESPONDENT in April of 1992 APPELLANT has believed in good faith, and continues to believe that THE TRIAL COURT'S jurisdiction over the parties to THE DISSOLUTION PROCEEDING terminated as of April 30, 1992 because of the payments made to RESPONDENT during the ten [10] year period between the entry of the interlocutory decree on April 26, 1982 [APP. APX. Exhibit "4" at page D00012] and his last payment to her in April of 1992.

9 Based on payments made to RESPONDENT during the ten [10] year period prior to April of 1992 APPELLANT has maintained, and continues to maintain the position that any order entered by THE TRIAL COURT after April of 1992 [including the December 14, 2000 order directing him to make the seven thousand five hundred dollar [$7,500.00] payment to RESPONDENT to cover her costs on appeal were void, and unenforceable [an issue which will continue to be asserted in the pending appeal in 4 Civ. D037299].

10 During the years that followed his last payment to RESPONDENT in April of 1992 APPELLANT has made no attempt to secrete himself and both his business and residential addresses have been readily ascertainable from either:

(a) Public records maintained by the State Bar of California;

(b) Professional directories [such as directories published by The Los Angeles Daily Journal, Martindale Hubbell and Parker's];
(c) Voter registration records maintained by the County of Los Angeles which are accessible to the public;
(d) Internet directories which are readily accessible to the general public; and
(e) Telephone directories circulated by various telephone companies which provide telephone service within the County of Los Angeles and the San Fernando Valley.

11 In 1994, following the Northridge Earthquake, all of APPELLANT'S records relating to his payments to RESPONDENT in the years prior to April 30, 1992 were damaged when a sewer pipe in his home backed up and caused raw sewage to be released in the area in which those records were stored [see. APP.APX Exhibit "32" at page D 00333 line 27 through page D 00334 line 20 inclusive].

12 RESPONDENT had personal knowledge of the physical damages caused to APPELLANT'S residence as a result of the Northridge Earthquake because on at least one (1) occasion during December of 1994 she entered areas of the residence [with APPELLANT present] in which APPELLANT'S records were stored in order to assist the parties' oldest daughter Elizabeth remove personal belongings which were located in that area of the residence.

13 During the summer of 1998, because of the passage of time and the condition of his records following the Northridge Earthquake, APPELLANT disposed of all of his files and records

relating to the payments he had made to RESPONDENT prior to the last payment in April of 1992 [see APP.APX. Exhibit "28" ¶ 27 at page D00289 line 27 through page D00290 line 5 inclusive].

14 On March 23, 2000, despite a lapse of seven (7) years and eleven (11) months following the date APPELLANT had made his last payment to RESPONDENT in the good faith belief that he had no further financial obligations to her, and almost two (2) years after he had disposed of his sewage ravaged files in the belief that they were no longer needed [see ¶¶ 10 and 11 supra], RESPONDENT commenced a proceeding in THE TRIAL COURT to enforce the terms of a proposed order described in statements made from the bench at the conclusion of the hearing which occurred on August 25, 1989 which were never included in an appealable order signed by any judicial officer [see APP.APX. Exhibit "27" at pages D00226 through D00278 inclusive].

15 Between the date APPELLANT made what he believed was his last payment to RESPONDENT in April of 1992 and the date in April of 2000 when he learned for the first time that proceedings had been commenced to enforce the non-appealable order entered in THE TRIAL COURT'S minutes on August 25, 1989 neither RESPONDENT or anyone claiming to act on her behalf made any attempt to advise APPELLANT that he still owed RESPONDENT anything further, either under the terms of that or any other order entered by any court having jurisdiction to make such an order.

16 Thereafter [despite the fact that as of the date of this petition no appealable order has ever been entered as a result of the August 25, 1989 hearing] on June 27, 2000 THE TRIAL COURT entered an order [which it labeled a "Judgment" after

initially referring to it as an "order" and is hereinafter referred to as "THE JUNE 27, 2000 ORDER] in which APPELLANT was order to pay RESPONDENT and her counsel over one hundred and forty three thousand dollars [$143,000.00] because of his inability to produce the records of performance which he had disposed of two (2) years earlier [see APP.APX. Exhibit "41" pages D00456 through D00459 inclusive].

17 On July 19, 2000, despite his belief that THE TRIAL COURT'S order entered on June 27, 2000 was an *ultra vires* act, void and unenforceable, in order to protect his rights APPELLANT filed a Notice of Appeal and thereafter complied with all of the requirements set forth in both the relevant statutes and rules adopted by the Judicial Council relating to the perfection and prosecution of civil appeals under California law to preserve his right to obtain a decision on the merits of his appeal. [see Docket Sheet attached as Exhibit "3"] including:

(a) Paying all fees required under the provisions of Government Code § 68926 and the California Judicial Council under Rule 1(c) of the California Rules of Court;
(b) Designating a record in accordance Rule 5 of the California Rules of Court and caused it to be filed in a timely manner in accordance with Rules 5.1 and 10 of the California Rules of Court; and
(c) Filing an opening brief pursuant to Rule 16 of the California Rules of Court and Appendix in accordance with Rule 5.1 of the California Rules of Court on October 10, 2000.

18 Because of the depletion of his available funds following the commencement of RESPONDENT'S enforcement proceedings

in March 20, 2000 APPELLANT was forced to discharge his independent counsel prior to the preparation and filing of his opening brief with THE COURT OF APPEAL, and has been forced [because of a lack of funds] to represent himself in connection with all matters related to his appeal from THE JUNE 21, 2000 ORDER entered in THE TRIAL COURT.

19 APPELLANT'S financial situation has been further complicated by the discovery of a malignant tumor in his right ascending colon on November 21, 2000 which required him to undergo a right hemicolectomy on January 11, 2001 [see REPLY APX Exhibit "11" at page B 179 lines 1 through 4 inclusive] .

20 On December 14, 2000, following a hearing on December 7, 2000 during which THE TRIAL COURT was advised that APPELLANT was about to undergo surgery to remove a malignancy which had been discovered in his ascending colon and did not have available funds to pay for either parties' counsel, an order was entered [over APPELLANT'S objection] which directed APPELLANT to advance the sum of seven thousand five hundred dollars ($7,500.00) to RESPONDENT to cover the cost of counsel to handle her response to the appeal in this case.

21 THE TRIAL COURT'S December 14, 2000 order was entered despite the undisputed evidence that RESPONDENT is:

(a) Gainfully employed "at a level that is sufficient for her to meet her reasonable needs" [see REPLY APX Exhibit "11" at page B 177 lines 20 through 22 inclusive] ;
(b) In good health [see REPLY APX Exhibit "11" at page B 178 lines 27 through 28 inclusive];

and

(c) Is able to make a contribution towards her fees [see REPLY APX Exhibit "11" at page B 181 lines 17 through 18 inclusive].

22 THE TRIAL COURT'S December 14, 2000 order was entered without any consideration for the "financial adversities" which might follow its entry [see REPLY APX Exhibit "11" at page B 5lines 7 through 11 inclusive].

23 APPELLANT did not have [and does not have] sufficient funds available [in the absence of the liquidation of assets which are exempt from execution under federal and state law] to advance the amounts which he was ordered to pay to RESPONDENT in THE TRIAL COURT'S December 14, 2000 order [see REPLY APX Exhibit "11" at page B 134 lines 22 through 27 inclusive, page B 142 lines 8 through 19 inclusive and page B 144 line 23 through page B 146 line 4 inclusive].

24 APPELLANT has filed and perfected an appeal from THE TRIAL COURT'S December 14, 2000 order, and that appeal is currently pending as set forth in the Docket Sheet attached hereto as Exhibit "4".

25 On January 8, 2001, despite APPELLANT'S objection filed with THE COURT OF APPEAL issued an order [Exhibit "2"] which directed APPELLANT to provide the court [on or before February 7, 200] either proof of payment under the provisions of THE TRIAL COURT'S December 14, 2000 order or "with a showing of why the appeal [in 4 Civ. D036239] should not be dismissed".

26 Nowhere in the order issued by THE COURT OF APPEAL on January 8, 2001 [Exhibit "2"] was there any

notice or indication that the document was intended as a *sui sponte* motion to dismiss [as suggested in THE COURT OF APPEAL'S February 21, 2001 order attached as Exhibit "1"], and based upon the wording contained therein APPELLANT interpreted the document to be the functional equivalent of an Order to Show Cause which would be followed by some more formal procedures consistent with California practice as set forth in decisions of this Court which have interpreted the provisions of Article VI § 14 of the Constitution of the State of California

.

27 APPELLANT maintains that an order, such as the order issued by THE COURT OF APPEAL on January 8, 2000, is "an order to show cause" and subject to all of the procedural rules applicable to such an order regardless of how it is characterized in a subsequent order [such as the February 21, 2001 order dismissing the appeal in 4 Civ. D036239] entered by the issuing court.

28 On February 6, 2001 APPELLANT filed his written response to THE COURT OF APPEAL'S January 8, 2001 order together with a set of Exhibits [including records relating to his January 11, 2001 cancer surgery] which included his objection to any attempt to enforce the monetary provisions of THE TRIAL COURT'S December 14, 2000 order without full compliance with in CALIFORNIA'S JUDGMENT ENFORCEMENT LAW .

29 Thereafter on February 21, 2001 THE COURT OF APPEAL summarily dismissed APPELLANT'S APPEAL in 4 Civ. D036239 without stating any reasons other than APPELLANT'S failure to pay RESPONDENT any money in response to THE TRIAL COURT'S December 14, 2000 order which was [and still is] the subject of a fully perfected appeal in 4 Civ. 037299].

30 In its February 21, 2001 order THE COURT OF APPEAL failed to:

(a) Give any consideration to the fact that RESPONDENT'S December 20, 2000 application for relief had not requested a dismissal [in apparent recognition of this Court's decision in Borenstein vs. Borenstein 11 Cal.2d. 301 (1938)];

(b) Address any of the issues raised in APPELLANT'S opening brief filed on October 10, 2000 [including constitutional issues under both Article I § 7(a) of the Constitution of the State of California and the Fourteenth Amendment to the Constitution of the United States of America] or

(c) Issue a decision which complied with the mandatory provisions of Article VI § 14 of the Constitution of the State of California.

31 The summary denial of APPELLANT'S constitutional and statutory rights evidenced by the arbitrary dismissal of his appeal on February 21, 2001 and APPELLANT'S prior request for relief under Code of Civil Procedure § 914 [4 Civ. D036392] which is the subject matter of a PETITION FOR REVIEW filed with this Court on February 9, 2001 [see Docket Sheet attached as Exhibit "5"]. without addressing any of the issues raised raises serious concerns and doubts concerning the panel's ability to be impartial in any future proceedings between APPELLANT and RESPONDENT arising out of THE DISSOLUTION PROCEEDINGS.

32 As a result of the facts set forth herein APPELLANT does not believe he can have an impartial review of the issues raised in his opening brief filed on October 10, 2000 or any other matter related to the issues in this case in the absence of a reassignment of the appeal herein to a different appellate panel pursuant to the provisions of Rule 20(a) of the California Rules of Court and Article VI § 12 of the Constitution of the State of California.

33 This Petition raises important issues of law, including unresolved issues concerning the extent of the jurisdiction of California appellate courts to:

(a) Enforce money judgments in matters related to cases pending before them;
(b) Deny parties to appeals rights guaranteed under state laws designed for the protection of judgment debtors; and
(c) Dispose of fully perfected appeals without deciding the issues raised on the merits.

WHEREFORE APPELLANT PRAYS that this Court either:

1. Grant Review and decide each of the issues raised in APPELLANT'S Opening Brief filed with THE COURT OF APPEAL on October 10, 2000, or

2. Issue an order reinstating the Appeal in this case and transfer it to a different appellate panel pursuant to rule 20(a) of the California Rules of Court.

3. For costs of suit [including reasonable attorney fees] incurred in defending against all proceedings commenced by RESPONDENT from and after March 23, 2000;

4. Such other and further relief as the Court deems just and proper.

LAW OFFICES OF JEROME ZAMOS

By:_____

JEROME ZAMOS, Attorneys
PETITIONER/APPELLANT
IN PRO PER

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I have read the foregoing PETITION FOR REVIEW OR IN THE ALTERNATIVE REQUEST BY APPELLANT FOR AN ORDER REINSTATING THE APPEAL IN THIS CASE AND TRANSFERRING IT TO A DIFFERENT APPELLATE PANEL PURSUANT TO RULE 20(a) OF THE CALIFORNIA RULES OF COURT and know its contents.

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of CALIFORNIA that the foregoing is true and correct.

Executed on February 26, 2001 at WOODLAND HILLS, CALIFORNIA.

_____

JEROME ZAMOS:

"APPENDIX "R"

James R. Spievak (SBN 54609)
Annis & Spievak
600 B Street, Suite 2120
San Diego, CA 92101
(619) 236-1820
(619) 236-1536 FAX

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO

FILED
May 18 2001

In re the Marriage of:	) Case No.:
Petitioner: JEROME ZAMOS	)D 270609 TXA
and	)
Respondent: PATRICIA ZAMOS	)

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DOMESTIC RELATIONS ORDER

Statement Of Facts

On June 27, 2000, the Court was presented with the issue *or* whether Petitioner (hereinafter "Jerome") had net all of his obligations under the Judgment regarding spousal *support,* supplemental child support/payment of college expenses, and equalization payments to Respondent (hereinafter "Patricia)

After a hearing on the matter, the Court held that spousal support had not terminated on April *30,* 1992, that spousal support arrearages as of March 31, 2000 were $66,500, that the amount due for supplemental child support/payment *of* college expenses *was* $3,919 as of March 31, 2000, and that the balance due on the

equalization payment to Patricia was $60, 829. The Court also ordered Jerome to pay Patricia's attorney's fees in the amount of $12,184. See Judgment After Hearing flied June 27, 2000.

Subsequently, there was another hearing on December 7, 2000 .At that time, the Court ordered Jerome to pay Patricia forthwith tine sum of $7,500 as and for a contribution for her reasonable fees and costs arising train the necessity to respond to Jerome's appeal from the Judgment After Hearing filed June 27, 2000 and/or any other writs or motions pending or filed in the California Appellate courts. That order was made without prejudice to Patricia to seek future application for additional fees See Findings and Order After Fearing filed December 14, 2000.

As of May 7, 2001, Jerome has not paid any of the amounts due and owing to Patricia nor any sums to her attorney, James Spievak. Jerome is a participant in the Jerome Zamos Defined Benefit Pension Plan. (hereinafter "the Plan") He and his wife, Judith Kaplan—Zamos, are the trustees of the Plan.

Patricia requests a Domestic Relations Order ("DRO" directing the Plan to pay her at least $90,103 plus accrued interest from the assets in the Plan consisting of $66,520 spousal support arrears, $3,919 child support arrears, $12,184 and $7,500 attorney's fees. In addition, Respondent is asking the Court to issue a judgment of additional spousal support arrears and attorney's tees and costs for this motion, This sum should also he included it. the Domestic Relations Order.

APPENDIX "S"
TABLE OF CONSTITUTIONAL PROVISIONS, STATUTES AND RULES FEDERAL LAWS

THE CONSTITUTION OF THE UNITED STATES OF AMERICA

Section One of the Fourteenth Amendment to the Constitution of the United States of America

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

THE UNITED STATES CODE

28 U.S.C. § 1257 (a)

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or

where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

CALIFORNIA LAWS

PROVISIONS OF THE CONSTITUTION OF THE STATE OF CALIFORNIA

Article VI § 14

Sec. 14. The Legislature shall provide for the prompt publication of such opinions of the Supreme Court and courts of appeal as the Supreme Court deems appropriate, and those opinions shall be available for publication by any person. Decisions of the Supreme Court and courts of appeal that determine causes shall be in writing with reasons stated.

LAWS ENACTED BY THE LEGISLATURE OF THE STATE OF CALIFORNIA

[Procedures for Enforcing Judgments calling for the payment of money]

CALIFORNIA CODE OF CIVIL PROCEDURE

§ 680.270

"Money judgment" means that part of a judgment that requires the payment of money.

§ 681.010

Except as otherwise provided by statute:

(a) A money judgment is enforceable as provided in Division 2 (commencing with Section 695.010).

§ 695.040.

Property that is not subject to enforcement of a money judgment may not be levied upon or in any other manner applied to the satisfaction of a money judgment.

§ 703.010 (a)

Except as otherwise provided by statute:

(a) The exemptions provided by this chapter or by any other statute apply to all procedures for enforcement of a money judgment.

§ 703.020

(a) The exemptions provided by this chapter apply only to property of a natural person.

(b) The exemptions provided in this chapter may be claimed by any of the following persons:

(1) In all cases, by the judgment debtor or a person acting on behalf of the judgment debtor.

(2) In the case of community property, by the spouse

of the judgment debtor, whether or not the spouse is also a judgment debtor under the judgment.

§ 703.020

A purported or contractual or other prior waiver of the exemption provided by this chapter or by any other statute, other than a waiver by failure to claim an exemption required to be claimed or made at the time enforcement is sought, is against public policy and void.

§ 703.070 (a)

Except as otherwise provided by statute:

(a) The exemptions provided by this chapter or by any other statute apply to a judgment for child, family, or spousal support.

[Procedures for perfecting and pursuing appeals]

CALIFORNIA CODE OF CIVIL PROCEDURE

§ 901

A judgment or order in a civil action or proceeding may be reviewed as prescribed in this title. The Judicial Council shall prescribe rules for the practice and procedure on appeal not inconsistent with the provisions of this title.

§ 902

Any party aggrieved may appeal in the cases prescribed in this title. A party appealing is known as an appellant, and an adverse party as a respondent.

Government Code

§ 68926.

The fee for filing a notice of appeal in a civil case appealed to a court of appeal is two hundred sixty-five dollars ($265). The fee for filing a petition for a writ within the original civil jurisdiction of the Supreme Court is two hundred dollars ($200). The fee for filing a petition for a writ within the original civil jurisdiction of a court of appeal is two hundred sixty-five dollars ($265). These fees are in full, for all services, through the rendering of the judgment or the issuing of the remittitur or peremptory writ, except the fee imposed by Section 68927. The Judicial Council may make rules governing the time and method of payment of these fees, and providing for excuse therefrom in appropriate cases. A fee may not be charged in appeals from, nor petitions for writs involving, juvenile cases or proceedings to declare a minor free from parental custody or control.

§ 68926.1.

Upon filing a notice of appeal for which a fee is paid pursuant to Section 68926, the appellant shall deposit the sum of one hundred dollars ($100) with the clerk of the originating court. The deposit shall be credited against the amount chargeable for the preparation of the clerk's transcript or any other appeal processing or notification. The deposit shall be forfeited in the event of abandonment or dismissal of appeal prior to filing of the record in the reviewing court.

§ 68927.

The fee for filing a petition for hearing in a civil case in the Supreme Court after decision in a court of appeal is two hundred dollars ($200).

RULES ADOPTED BY THE CALIFORNIA JUDICIAL COUNCIL

CALIFORNIA RULES OF COURT

Rule 1(a).

(a) [Form of notice] An appeal from a judgment of a superior court or from a particular part of the judgment is taken by serving and filing with the clerk of that court a notice of appeal from that judgment. The notice shall be signed by the appellant or by his or her attorney and shall be sufficient if it states in substance that the appellant appeals from a specified judgment or a particular part of the judgment. A notice of appeal shall be liberally construed in favor of

its sufficiency. The notice need not specify the court to which the appeal is taken and shall be deemed to be an appeal to the Court of Appeal for the district. Failure to serve the notice shall not prevent its filing and shall not affect the validity of the appeal, but on reasonable notice the appellant may be required to remedy the failure.

Rule 1(c).

(c) [Payment of filing fee in civil appeals] A party filing a notice of appeal shall simultaneously deliver to the clerk of the superior court the filing fee of $265, which should be in the form of a check or money order payable to the clerk of the Court of Appeal. If the fee is delivered in cash, the clerk of the superior court shall give a receipt. The notice of appeal shall be accepted for filing even though the filing fee is not paid, subject to rule 10(a). The appellant shall also deposit any sum required by Government Code section 68926.1 (clerk's transcript or index).

Rule 2.

(a) [Normal time] Except as otherwise provided by Code of Civil Procedure section 870 or other statute or rule 3, a notice of appeal from a judgment shall be filed on or before the earliest of the following dates: (1) 60 days after the date of mailing by the clerk of the court of a document entitled "notice of entry" of judgment; (2) 60 days after the date of service of a document entitled "notice of entry" of judgment by any party upon the party filing the notice of appeal, or by the party filing the notice of appeal; or (3) 180 days

after the date of entry of the judgment. For the purposes of this subdivision, a file-stamped copy of the judgment may be used in place of the document entitled "notice of entry".

(b) [What constitutes entry] For the purposes of this rule: (1) The date of entry of a judgment shall be the date of its entry in the judgment book or, in a county following the procedure specified in Code of Civil Procedure section 668.5 in lieu of maintaining a judgment book, the date of filing the judgment with the clerk pursuant to that section. (2) The date of entry of an appealable order which is entered in the minutes shall be the date of its entry in the permanent minutes, unless the minute order entered expressly directs that a written order be prepared, signed, and filed, in which case the date of entry shall be the date of filing of the signed order. (3) The date of entry of an appealable order which is not entered in the minutes shall be the date of filing of the order signed by the court. (4) The date of entry of a decree of distribution in a probate proceeding shall be the date of its entry at length in the judgment book or other permanent record of the court. The fact that a written order is to be prepared under the provisions of rule 391 or a similar local rule does not constitute an express direction in the minute order that a written order be "prepared, signed, and filed" within the meaning of (2) above.

(c) [Premature notice] A notice of appeal filed prior to entry of the judgment, but after its rendition, shall be valid and shall be deemed to have been filed immediately after entry. A notice of appeal filed prior to rendition of the judgment, but after the judge has

announced his intended ruling, may, in the discretion of the reviewing court for good cause, be treated as filed immediately after entry of the judgment.

(d) [Appealable order] As used in subdivisions (a) and (c) of this rule, "judgment" means "appealable order" if the appeal is from an appealable order.

Rule 16(a)

(a) [Time] In civil cases appellant's opening brief shall be served and filed within 30 days after the filing of the record (or the reporter's transcript if there was an election under rule 5.1) in the reviewing court, or within 70 days after filing a notice of election under rule 5.1 if the appellant did not serve and file a notice to prepare a reporter's transcript; respondent's brief shall be served and filed within 30 days after filing of appellant's opening brief; and appellant's reply brief, if any, shall be served and filed within 20 days after filing of respondent's brief, except that when there is a cross-appeal pursuant to rule 3 appellant's reply brief which also contains a brief as cross-respondent shall be served and filed within 30 days after filing of respondent's brief containing a brief as cross-appellant, and respondent's reply brief as cross-appellant shall be served and filed within 20 days after filing of appellant's reply brief containing a brief as cross-respondent. By stipulation filed with the reviewing court the parties may extend each of such periods for not more than 60 days, and thereafter the time may be extended only by the Chief Justice or Presiding Justice, for good cause

shown. No such stipulation shall be effective unless it is filed prior to expiration of the period sought to be extended.

Rule 17

(a) [Opening brief] If the appellant's opening brief is not filed within the time prescribed in subdivision (a) of rule 16, the clerk of the reviewing court shall notify the parties by mail that if the brief is not filed within 15 days after the date of mailing of the notification, the appeal will be dismissed unless good cause is shown for relief. If a sufficient written showing of excuse is made within the 15-day period, the Chief Justice or presiding justice may grant additional time to file the brief subject to such conditions as may be deemed proper to impose; otherwise the appeal may be dismissed forthwith.

If the brief is not filed within the time granted by the Chief Justice or presiding justice, the appeal may be dismissed forthwith. If the notification is not mailed by the clerk or the appeal is not dismissed on the court's own motion, the respondent may move to dismiss the appeal.

(b) [Respondent's brief] If the respondent's brief is not filed within the time prescribed in subdivision (a) of rule 16, the clerk of the reviewing court shall notify the parties by mail that the case may be submitted for decision on the record and on the appellant's opening brief unless the brief is filed within 15 days after the date of mailing of the notification or good cause is shown for relief. If the brief is not filed within that

period and no sufficient showing of excuse is made, or if additional time is granted by the Chief Justice or presiding justice and the brief is not filed within the period as so extended, the court may accept as true the statement of facts in the appellant's opening brief and, unless the appellant requests oral argument, may submit the case for decision on the record and on the appellant's opening brief.

(c) [Criminal appeals] In an appeal in a criminal case, the 15-day time periods in subdivisions (a) and (b) shall, instead, be 30 days.

Rule 19

(a) [Before record filed] At any time before the filing of the record in the reviewing court, the appellant may file in the office of the clerk of the superior court a written abandonment of the appeal; or the parties may file in that office a stipulation for abandonment. The filing of either document shall operate to dismiss the appeal and to restore the jurisdiction of the superior court. Upon such a dismissal, the appellant shall be entitled to the return of that portion of any deposit in excess of the actual cost of preparation of the record on appeal up to that time. The clerk of the superior court shall promptly send a copy or other notice of the abandonment to the clerk of the reviewing court.

(b) [After record filed] If the record has been filed in the reviewing court, an abandonment or a stipulation of the parties to dismiss the appeal shall be filed in that court, which may order the dismissal and immediate issuance of the remittitur.

(c) [Notification by clerk] The clerk of the court in which the abandonment or dismissal is filed shall immediately notify the adverse party of the filing of the abandonment or the order of dismissal.

(d) [Approval of compromise] Whenever the guardian of a minor or of an insane or incompetent person seeks approval of a proposed compromise of a case pending on appeal, the reviewing court may, by order, refer the matter to the trial court with instructions to hear the same and determine whether the proposed compromise is for the best interests of the ward, and to report its findings. On receipt of the report, the reviewing court shall make its order approving or disapproving the compromise.

Rule 21(a)

(a) [Time and place of sessions] At the times specified by the court, the Supreme Court shall hold regular sessions in San Francisco, Los Angeles, and Sacramento and may hold special sessions elsewhere. Each Court of Appeal and each division thereof shall hold regular sessions at least once in each quarter at times specified by the court. Motions will ordinarily be decided without argument, but may be placed on the calendar for any session by order of the court or the presiding justice or Chief Justice.